Title 18

Chapter 171: General Provisions

§ 7101. Definitions

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

(1) ~~"Board" means the board of mental health.~~

(2) "Commissioner" means the Commissioner of Mental Health.

(3) "Custody" means safe-keeping, protection, charge, or care.

(4) "Designated hospital" means a hospital or other facility designated by the Commissioner as adequate to provide appropriate care for the mentally ill patient.

(5) "Elopement" means the leaving of a designated hospital or designated program ~~or training school~~ without lawful authority.

(6) "Head of a hospital" means the administrator or persons in charge at any time.

(7) "Hospital" means a public or private hospital or facility or part thereof, equipped and otherwise qualified to provide in-patient care and treatment for persons with mental conditions or psychiatric disabilities.

(8) "Individual" means a resident of or a person in Vermont.

(9) "Interested party" means a guardian, spouse, parent, adult child, close adult relative, a responsible adult friend, or person who has the individual in his or her charge or care. It also means a mental health professional, a law enforcement officer, a licensed physician, or a head of a hospital.

(10) "Law enforcement officer" means a sheriff, deputy sheriff, constable, municipal police officer, or state police.

( ) "Licensed independent practitioner" means a physician, an advance practice registered nurse licensed by the Vermont Board of Nursing as a nurse practitioner or a Physician Assistant licensed by the Vermont Board of Medical Practice.

(11) "Licensed physician" means a physician legally qualified and licensed to practice as a physician in Vermont.

(12) [Deleted by 2013, Adj. Sess., No. 96, § 100, eff. July 1, 2014.]

(13) "Mental health professional" means a person with professional training, experience, and demonstrated competence in the treatment of mental illness, who shall be a physician, psychologist, social worker, mental health counselor, nurse, or other qualified person designated by the Commissioner.

(14) "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory, any of which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but shall not include intellectual disability.

(15) "Patient" means a resident of or person in Vermont qualified under this title for hospitalization or treatment as a person with a mental illness or intellectual disability.

(16) "A patient in need of further treatment" means:

(A) A person in need of treatment; or

(B) A patient who is receiving adequate treatment, and who, if such treatment is discontinued, presents a substantial probability that in the near future his or her condition will deteriorate and he or she will become a person in need of treatment.

(17) "A person in need of treatment" means a person who has a mental illness and, as a result of that mental illness, his or her capacity to exercise self-control, judgment, or discretion in the conduct of his or her affairs and social relations is so lessened that he or she poses a danger of harm to himself, to herself, or to others:

(A) A danger of harm to others may be shown by establishing that:

(i) he or she has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions he or she has placed others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions he or she has presented a danger to persons in his or her care.

(B) A danger of harm to himself or herself may be shown by establishing that:

(i) he or she has threatened or attempted suicide or serious bodily harm; or

(ii) he or she has behaved in such a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, personal or medical care, shelter, or self-protection and safety, so that it is probable that death, substantial physical bodily injury, serious mental deterioration, or serious physical debilitation or disease will ensue unless adequate treatment is afforded.

(18) "Resident of Vermont" means:

(A) a person who has lived continuously in Vermont for one year immediately preceding his or her admission as a patient or immediately preceding his or her becoming a proposed patient; or

(B) a person who has a present intention to make Vermont his or her home for an indefinite period of time. This intention may be evidenced by prior statements or it may be implied from facts which show that the person does in fact make Vermont his or her permanent home. A married woman shall be capable of establishing a legal residence apart from her husband, and a child under 18 years shall take legal residence of the parent or guardian with whom he or she is actually living.

(19) "Retreat" means the Brattleboro Retreat.

(20) "Secretary" means the secretary of the Agency of Human Services.

(21) Repealed by 2005, Adj. Sess., No. 174, § 140(4), eff. July 1, 2006.

(22) Repealed by 2005, Adj. Sess., No. 174, § 140(4), eff. July 1, 2006.

(23) "Vermont" means the State of Vermont.

(24) "Voluntary patient" means an individual admitted to a hospital voluntarily or an individual whose status has been changed from involuntary to voluntary.

(25) "Children and adolescents with a severe emotional disturbance" means those persons defined as such under 33 V.S.A. § 4301(3).

(26) "No refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

(27) "Participating hospital" means a hospital under contract with the Department of Mental Health to participate in the no refusal system.

(28) “Successor in interest” means the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital.

(29) “Peer” means an individual who has a personal experience of living with a mental health condition or psychiatric disability.

(30) “Peer services” means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery.

§ 7102. Out of state patients

Nothing in this part of this title shall be deemed to alter or impair the application or availability to any patient, while hospitalized in a state outside Vermont pursuant to contractual arrangements under subdivision 7401(6) of this title, of any rights, remedies, or protective safeguards provided by the law of that state or by the Interstate Compact on Mental Health where applicable.

§ 7103. Disclosure of information

(a) All certificates, applications, records, and reports, other than an order of a court made for the purposes of this part of this title, and directly or indirectly identifying a patient or former patient or an individual whose hospitalization or care has been sought or provided under this part, together with clinical information relating to such persons shall be kept confidential and shall not be disclosed by any person except insofar:

(1) as the individual identified, the individual's health care agent under section 5264 of this title, or the individual's legal guardian, if any (or, if the individual is an un-emancipated minor, his or her parent or legal guardian), shall consent in writing; or

(2) as disclosure may be necessary to carry out any of the provisions of this part; or

(3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest.

(b) Nothing in this section shall preclude disclosure, upon proper inquiry, of information concerning medical condition to the individual's family, ~~clergy,~~ physician, attorney, ~~the individual's health care agent under section 5264 of this title,~~ a person to whom disclosure is authorized by a validly executed ~~durable power of attorney for health care~~ advance directive, or to an interested party.

(c) Any person violating this section shall be fined not more than $2,000.00 or

imprisoned for not more than one year, or both.

(d) Nothing in 12 V.S.A. § 1612(a) shall affect the provisions of this section.

(e) Mandatory disclosure to home providers.

(1) With the written consent of the individual, or his or her guardian, an agency designated by the Department of disabilities, aging, and independent living or of mental health to provide developmental disability and mental health services shall disclose all relevant information, in writing, to a potential home care provider for that individual so that the provider has the opportunity to make a fully informed decision prior to the placement.

(2) If the individual, or his or her guardian, does not consent to the disclosure, the placement will not occur unless the home care provider agrees, in writing, to the placement, absent disclosure.

(3) A home care provider must furnish to any person providing respite care, the individual's relevant information obtained from the agency designated by the Department of disabilities, aging, and independent living or of health to provide developmental disability and mental health services, as provided in this subsection. Where the home care provider has agreed to placement without disclosure, the home care provider shall inform the respite provider of that fact.

(4) Home care and respite providers, whether or not they agree to a placement, shall be subject to the confidentiality and disclosure requirements of subsections (a), (b), and (c) of this section.

(5) As used in this subsection:

(A) “Home care provider” means a person or entity paid by an agency designated by the Department of disabilities, aging, and independent living or of mental health to provide developmental disability and mental health services, to provide care in his or her home.

(B) “Relevant information” means information needed to protect the individual and others from harm, including any relevant history of violent behavior or conduct causing danger of harm to others, as defined in subdivision 7101(17)(A) of this title, any medications presently prescribed to the individual, and any known precursors of dangerous behavior that may cause future harm.

(C) “Respite provider” means a person, paid by a home care provider, to provide care by the day or overnight in the person's home.

(6) Any written disclosure of relevant information under this subsection shall also include notice of the confidentiality and disclosure requirements of this section.

(7) Where the individual has consented to disclosure, an agency designated by the Department of disabilities, aging, and independent living or health to provide developmental disability and mental health services shall provide updated information regarding the individual to the home care provider.

§ 7104. Wrongful ~~hospitalization~~ placement in custody or temporary custody or denial of rights; fraud; elopement

A person shall be fined not more than $500.00 or imprisoned not more than one year, or both, if he or she willfully causes, or conspires with or assists another to cause:

(1) the ~~hospitalization~~ placement into the custody or temporary custody of the Commissioner of an individual knowing that the individual is not mentally ill or in need of hospitalization or treatment as an individual with a mental illness or intellectual disability; or

(2) the denial to any individual of any rights granted to him or her under this part of this title; or

(3) the voluntary ~~admission to a hospital~~ placement into the custody or temporary custody of the Commissioner of an individual knowing that he or she is not mentally ill or eligible for treatment thereby attempting to defraud the State; or

(4) the elopement of any patient from a hospital or who knowingly harbors any patient who has eloped~~, or who aids in abducting a patient who has been conditionally discharged from the person or persons in whose care and service that patient has been legally placed~~.

§ 7105. ~~Arrest~~ Apprehension of eloped persons

Any sheriff, deputy sheriff, constable, or officer of state or local police, and any officer or employee of any designated hospital, designated program, or training school may ~~arrest~~ apprehend any person who has eloped from a designated hospital or designated program ~~or training school~~ and return such person.

§ 7106. Notice of ~~hospitalization~~ custody and discharge

Whenever a patient has been ~~admitted to a hospital other than upon his or her own application~~ placed in the custody or temporary custody of the Commissioner , the head of the hospital shall immediately notify the patient's legal guardian, spouse, or, if the patient

is a minor, parent or parents~~, or nearest known relative or interested party, if known~~. If the ~~involuntary hospitalization or admission~~ placement in the custody or temporary custody of the Commissioner was without court order, notice shall also be given to the superior court judge for the family division of the superior court in the unit wherein the hospital is located. If ~~the hospitalization or admission~~ placement in the custody or temporary custody of the Commissioner was by order of any court, the head of the hospital admitting or discharging an individual shall forthwith make a report thereof to the Commissioner and to the court which entered the order for ~~hospitalization or admission~~ placement in the custody or temporary custody.

~~§ 7107. Extramural work~~

~~Any hospital or training school in the state dealing with mental health may do, or procure to be done, extramural work in the way of prevention, observation, care, and consultation with respect to mental health.~~

~~§ 7108. Canteens~~

~~The chief executive officer of the Vermont State Hospital or its successor in interest may conduct a canteen or commissary, which shall be accessible to patients, employees, and visitors of the Vermont State Hospital or its successor in interest at designated hours and shall be operated by employees of the hospital. A revolving fund for this purpose is authorized. The salary of an employee of the hospital shall be charged against the canteen fund. Proceeds from sales may be used for operation of the canteen and the benefit of the patients and employees of the hospital under the direction of the chief executive officer and subject to the approval of the Commissioner. All balances of such funds remaining at the end of any fiscal year shall remain in such fund for use during the succeeding fiscal year. An annual report of the status of the funds shall be submitted to the Commissioner.~~

~~§ 7109. Sale of articles; revolving fund~~

~~(a) The superintendent of a hospital or training school may sell articles made by the patients or students in the handiwork or occupational therapy Departments of the institution and the proceeds thereof shall be credited to a revolving fund. When it is for their best interest, the superintendent may, with the consent of the patients or their legal representatives, employ patients or students or permit them to be employed on a day placement basis.~~

~~(b) The consent of the patient or the legal representative of the patient or student shall, in consideration of the undertaking of the superintendent, contain the further agreement that one-half the earnings of the patient or student shall be credited to the personal account of the patient or student so employed at interest for benefit of the patient or student and the~~

~~balance shall be credited to the fund. The superintendent shall hold and expend the fund for the purchase of equipment and materials for the handicraft or group therapy Departments and for the educational and recreational welfare of the patient or student group. He or she shall submit an annual report of the fund to the Commissioner. Balances remaining in it at the end of a fiscal year shall be carried forward and be available for the succeeding fiscal year.~~

~~(c) For purposes of this section the legal representative of the patient or student shall be the duly appointed guardian, the spouse, the parents or the next of kin legally responsible for the patient or student. In their absence, the Commissioner shall be the legal representative.~~

§ 7110. Certification of mental illness

A certification of mental illness by a licensed ~~physician~~ independent practitioner required by section 7504 of this title shall be made ~~by a board eligible psychiatrist, a board certified psychiatrist, or a resident in psychiatry,~~ under penalty of perjury. ~~In areas of the state where board eligible psychiatrists, board certified psychiatrists, or residents in psychiatry are not available to complete admission certifications to the Vermont State Hospital or its successor in interest, the Commissioner may designate other licensed physicians as appropriate to complete certification for purposes of section 7504 of this title.~~

§ 7111. Right to legal counsel

In any proceeding before, or notice to, a court of this state involving a ~~patient or student~~, ~~or a proposed patient or student~~ person placed in the custody or temporary custody of the Commissioner of Mental Health, that person shall be afforded counsel, and if the ~~patient or student or proposed patient or student~~ person is unable to pay for counsel, compensation shall be paid by the State to counsel assigned by the court; however, this section shall not apply to a proceeding under section 7505 of this title.

~~**§ 7112. Appeals**~~

~~A patient may appeal any decision of the board. The appeal shall be to the family division of the superior court of the county wherein the hospital is located. The appeal shall be taken in such manner as the supreme court may by rule provide, except that there shall not be any stay of execution of the decision appealed from.~~

§ 7113. Independent examination; payment

Whenever a court orders an independent examination by a mental health professional or a qualified developmental disabilities professional pursuant to this title or 13 V.S.A. §

4822, the cost of the examination shall be paid by the Department of Disabilities, Aging, and Independent Living or of Mental Health, as applicable. The mental health professional or qualified developmental disabilities professional may be selected by the court but the Commissioner of Disabilities, Aging, and Independent Living or of Mental Health may adopt a reasonable fee schedule for examination, reports, and testimony.

Chapter 173: The Department of Mental Health

§ 7201. Mental health

The Department of Mental Health~~, as the successor to the division of mental health services of the Department of health,~~ shall centralize and more efficiently establish the general policy and execute the programs and services of the State concerning mental health, and integrate and coordinate those programs and services with the programs and services of other Departments of the State, its political subdivisions, and private agencies, so as to provide a flexible comprehensive service to all citizens of the State in mental health and related ~~problems~~ matters.

§ 7202. Coordination

The Department of Mental Health shall be responsible for coordinating efforts of all agencies and services, government and private, on a statewide basis in order to promote and improve the mental health of individuals through outreach, education, and other activities. ~~The Department of disabilities, aging, and independent living shall be responsible for coordinating the efforts of all agencies and services, government and private, on a statewide basis in order to promote and improve the lives of individuals with developmental disabilities~~.

§ 7204. Planning; grants; clinics

The Department is the authority in this State for planning a comprehensive mental health program. It may apply for and receive grants from the federal government and other sources for that planning. It shall operate such clinics and other mental health units as it may consider necessary and shall fulfill the State's responsibilities as to community mental health services, so far as practical.

§ 7205. Supervision of institutions

(a) The Department of Mental Health shall operate the Vermont ~~State Hospital or its successor in interest~~ Psychiatric Care Hospital and shall be responsible for patients receiving involuntary treatment.

(b) The Commissioner of ~~the Department of Mental Health~~, in consultation with the secretary, shall appoint a chief executive officer of ~~the Vermont State Hospital or its successor in interest~~ Vermont Psychiatric Care Hospital to oversee the operations of the hospital. The chief executive officer position shall be an exempt position.

(c) The Department of Mental Health shall operate a state-owned secure residential recovery facility and shall be responsible for residents receiving treatment therein.

§ 7206. Recommendations and reports

The Department shall from time to time study comprehensively the mental health problems of the State, develop programs for mental health services, and recommend as to the integration within the Department of any other related agencies and services as it considers proper. It shall also periodically review and evaluate the mental health programs.

§ 7207. Commissioner of mental health; appointment; qualifications

The secretary shall appoint a Commissioner of mental health, as provided in 3 V.S.A. § 3051, who shall be a mental health care professional who has had educational and practical experience in the field of mental health.

~~**§ 7208. Definitions**~~

~~As used in this chapter:~~

~~(1) "Adult foster care" shall have the same meaning as in 33 V.S.A. § 502.~~

~~(2) "Home care services" shall have the same meaning as in 33 V.S.A. § 502.~~

Chapter 174: Mental Health System of Care

§ 7251. Principles for mental health care reform

The General Assembly adopts the following principles as a framework for reforming the mental health care system in Vermont:

(1) The State of Vermont shall meet the needs of individuals with a mental condition or psychiatric disability, including the needs of individuals in the custody of the Commissioner of Corrections, and the State's mental health system shall reflect excellence, best practices, and the highest standards of care.

(2) Long-term planning shall look beyond the foreseeable future and present needs of the mental health community. Programs shall be designed to be responsive to changes over time in levels and types of needs, service delivery practices, and sources of funding.

(3) Vermont's mental health system shall provide a coordinated continuum of care by the Departments of Mental Health and of Corrections, designated hospitals, designated agencies, and community and peer partners to ensure that individuals with a mental condition or psychiatric disability receive care in the most integrated and least restrictive settings available. Individuals' treatment choices shall be honored to the extent possible.

(4) The mental health system shall be integrated into the overall health care system.

(5) Vermont's mental health system shall be geographically and financially accessible. Resources shall be distributed based on demographics and geography to increase the likelihood of treatment as close to the patient's home as possible. All ranges of services shall be available to individuals who need them, regardless of individuals' ability to pay.

(6) The State's mental health system shall ensure that the legal rights of individuals with a mental condition or psychiatric disability are protected.

(7) Oversight and accountability shall be built into all aspects of the mental health system.

(8) Vermont's mental health system shall be adequately funded and financially sustainable to the same degree as other health services.

(9) Individuals with a psychiatric disability or mental condition who are in the custody of the Commissioner of Mental Health and who receive treatment in an acute inpatient hospital, intensive residential recovery facility, or a secure residential facility shall be afforded at least the same procedural rights and protections as those individuals cared for at the former Vermont State Hospital.

§ 7252. Definitions

As used in this chapter:

(1) “Adult outpatient services” means flexible services responsive to individuals' preferences, needs, and values that are necessary to stabilize, restore, or improve the level of social functioning and well-being of individuals with a mental condition, including individual and group treatment, medication management, psychosocial rehabilitation, and case management services.

(2) “Designated agency” means a designated community mental health and

developmental disability agency as described in subsection 8907(a) of this title.

(3) “Designated area” means the counties, cities, or towns identified by the Department of Mental Health that are served by a designated agency.

(4) “Enhanced programming” means targeted, structured, and specific intensive mental health treatment and psychosocial rehabilitation services for individuals in individualized or group settings.

(5) “Intensive residential recovery facility” means a licensed program under contract with the Department of Mental Health that provides a safe, therapeutic, recovery-oriented residential environment to care for individuals with one or more mental conditions or psychiatric disabilities who need intensive clinical interventions to facilitate recovery in anticipation of returning to the community. This facility shall be for individuals not in need of acute inpatient care and for whom the facility is the least restrictive and most integrated setting.

(6) “Mobile support team” means professional and peer support providers who are able to respond to an individual where he or she is located during a crisis situation.

(7) “Non-categorical case management” means service planning and support activities provided for adults by a qualified mental health provider, regardless of program eligibility criteria or insurance limitations.

(8) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

(9) “Participating hospital” means a hospital under contract with the Department of Mental Health to participate in the no refusal system.

(10) [Repealed by 2013, Adj. Sess., No. 192, § 1a, eff. July 1, 2014.]

(11) [Repealed by 2013, Adj. Sess., No. 192, § 1a, eff. July 1, 2014.]

(12) “Psychosocial rehabilitation” means a range of social, educational, occupational, behavioral, and cognitive interventions for increasing the role performance and enhancing the recovery of individuals with a serious mental condition or psychiatric disability, including services that foster long-term recovery and self-sufficiency.

(13) “Recovery-oriented” means a system or services that emphasize the process of change through which individuals improve their health and wellness, live a self-directed

life, and strive to reach their full potential.

(14) "Serious bodily injury" means the same as in section 1912 of this title.

(15) "Warm line" means a nonemergency telephone response line operated by trained peers for the purpose of active listening and assistance with problem-solving for persons in need of such support.

§ 7253. ~~Clinical resource~~ Care management and oversight

The Commissioner of Mental Health, in consultation with health care providers as defined in section 9432 of this title, including designated hospitals, designated agencies, individuals with mental conditions or psychiatric disabilities, and other stakeholders, shall design and implement a ~~clinical resource~~ care management system that ensures the highest quality of care and facilitates long-term, sustained recovery for individuals in the custody of the Commissioner.

(1) For the purpose of coordinating the movement of individuals across the continuum of care to the most appropriate services, the ~~clinical resource~~ care management system shall:

(A) ensure that all individuals in the care and custody of the Commissioner receive the highest quality and least restrictive care necessary;

(B) develop a process for receiving direct input from persons receiving services on treatment opportunities and the location of services;

(C) use state-employed ~~clinical resource management coordinators~~ care managers to work collaboratively with community partners, including designated agencies, hospitals, individuals with mental conditions or psychiatric disabilities, and peer groups, to ensure access to services for individuals in need. ~~Clinical resource management coordinators~~ Care managers or their designees shall be available 24 hours a day, seven days a week to assist emergency service clinicians in the field to access necessary services;

(D) use an electronic, web-based bed board to track in real time the availability of bed resources across the continuum of care;

(E) use specific level-of-care descriptions, including admission, continuing stay, and discharge criteria, and a mechanism for ongoing assessment of service needs at all levels of care;

(F) specify protocols for medical clearance, bed location, transportation, information sharing, census management, and discharge or transition planning;

(G) coordinate transportation resources so that individuals may access the least restrictive mode of transport consistent with safety needs;

(H) ensure that to the extent patients' protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law is used within the ~~clinical resource~~ care management system, the health information exchange privacy standards and protocols as described in subsection 9351(e) of this title shall be followed;

(I) review the options for the use of ambulance transport, with security as needed, as the least restrictive mode of transport consistent with safety needs required pursuant to section 7511 of this title; and

(J) ensure that individuals under the custody of the Commissioner being served in designated hospitals, intensive residential recovery facilities, and the secure residential recovery facility shall have access to a mental health patient representative. The patient representative shall advocate for persons receiving services and shall also foster communication between persons receiving services and health care providers. The Department of Mental Health shall contract with an independent, peer-run organization to staff the full-time equivalent of a representative of persons receiving services.

(2) For the purpose of maintaining the integrity and effectiveness of the ~~clinical resource~~ care management system, the Department of Mental Health shall:

(A) require a designated team of clinical staff to review the treatment received and clinical progress made by individuals within the Commissioner's custody;

(B) coordinate care across the mental and physical health care systems as well as ensure coordination within the Agency of Human Services, particularly the Department of corrections, the Department of health's alcohol and drug abuse programs, and the Department of disabilities, aging, and independent living;

(C) coordinate service delivery with Vermont's Blueprint for Health and health care reform initiatives, including the health information exchange as defined in section 9352 of this title and the health benefit exchange as defined in 33 V.S.A. § 1803;

(D) use quality indicators, manageable data requirements, and quality improvement processes to monitor, evaluate, and continually improve the outcomes for individuals and the performance of the clinical resource management system;

(E) actively engage stakeholders and providers in oversight processes; and

(F) provide mechanisms for dispute resolution.

§ 7254. Integration of the treatment for mental health, substance abuse, and physical health

(a) The director of health care reform and the Commissioners of mental health, of health, and of Vermont health access and the Green Mountain Care board or designees shall ensure that the redesign of the mental health delivery system established in this chapter is an integral component of the health care reform efforts established in 3 V.S.A. § 2222a. Specifically, the director, Commissioners, and board shall confer on planning efforts necessary to ensure that the following initiatives are coordinated and advanced:

(1) any health information technology projects;

(2) the integration of health insurance benefits in the Vermont health benefit exchange to the extent feasible under federal law;

(3) the integration of coverage under Green Mountain Care;

(4) the Blueprint for Health;

(5) the reformation of payment systems for health services to the extent allowable under federal law or under federal waivers; and

(6) other initiatives as necessary.

(b) The Department of financial regulation shall ensure that private payers are educated about their obligation to reimburse providers for less restrictive and less expensive alternatives to hospitalization.

§ 7255. System of care

The Commissioner of Mental Health shall coordinate a geographically diverse system and continuum of mental health care throughout the State that shall include at least the following:

(1) comprehensive and coordinated community services, including prevention, to serve children, families, and adults at all stages of mental condition or psychiatric disability;

(2) peer services, which may include:

(A) a warm line;

(B) peer-provided transportation services;

(C) peer-supported crisis services; and

(D) peer-supported hospital diversion services;

(3) alternative treatment options for individuals seeking to avoid or reduce reliance on medications;

(4) recovery-oriented housing programs;

(5) intensive residential recovery facilities;

(6) appropriate and adequate psychiatric inpatient capacity for voluntary patients;

(7) appropriate and adequate psychiatric inpatient capacity for involuntary inpatient treatment services, including persons receiving treatment through court order from a civil or criminal court; and

(8) a secure residential recovery facility.

§ 7256. Reporting requirements

Notwithstanding 2 V.S.A. § 20(d), the Department of Mental Health shall report annually on or before January 15 to the Senate Committee on Health and Welfare and the House Committee on Human Services regarding the extent to which individuals with a mental condition or psychiatric disability receive care in the most integrated and least restrictive setting available. The Department shall consider measures from a variety of sources, including the Joint Commission, the National Quality Forum, the Centers for Medicare and Medicaid Services, the National Institute of Mental Health, and the Substance Abuse and Mental Health Services Administration. The report shall address:

(1) use of services across the continuum of mental health services;

(2) adequacy of the capacity at each level of care across the continuum of mental health services;

(3) individual experience of care and satisfaction;

(4) individual recovery in terms of clinical, social, and legal outcomes;

(5) performance of the State's mental health system of care as compared to nationally recognized standards of excellence;

(6) ways in which patient autonomy and self-determination are maximized within the context of involuntary treatment and medication;

(7) outcome measures and other data on individuals for whom petitions for involuntary medication are filed; and

(8) progress on alternative treatment options across the system of care for individuals seeking to avoid or reduce reliance on medications, including supported withdrawal from medications.

§ 7257. Reportable adverse events

(a) An acute inpatient hospital, an intensive residential recovery facility, a designated agency, or a secure residential facility shall report to the Department of Mental Health instances of death or serious bodily injury to individuals with a mental condition or psychiatric disability in the custody or temporary custody of the Commissioner.

(b) An acute inpatient hospital shall report to the Department of Mental Health any staff injuries caused by a person in the custody or temporary custody of the Commissioner that are reported to both the Department of Labor and to the hospital's workers' compensation carrier.

§ 7258. Review of adverse community events

The Department of Mental Health shall establish a system that ensures the comprehensive review of a death or serious bodily injury occurring outside an acute inpatient hospital when the individual causing or victimized by the death or serious bodily injury is in the custody of the Commissioner or had been in the custody of the Commissioner within six months of the event. The Department shall review each event for the purpose of determining whether the death or serious bodily injury was the result of inappropriate or inadequate services within the mental health system and, if so, how the failure shall be remedied.

§ 7259. Mental health care ombudsman

(a) The Department of Mental Health shall establish the Office of the Mental Health Care Ombudsman within the agency designated by the Governor as the protection and advocacy system for the State pursuant to 42 U.S.C. § 10801 et seq. The agency may execute the duties of the Office of the Mental Health Care Ombudsman, including authority to assist individuals with mental health conditions and to advocate for policy issues on their behalf; provided, however, that nothing in this section shall be construed to impose any additional duties on the agency in excess of the requirements under federal law.

(b) The agency may provide a report annually to the General Assembly regarding the implementation of this section.

(c) In the event the protection and advocacy system ceases to provide federal funding to the agency for the purposes described in this section, the General Assembly may allocate sufficient funds to maintain the Office of the Mental Health Care Ombudsman.

(d) The Department of Mental Health shall provide a copy of the certificate of need for all emergency involuntary procedures performed on a person in the custody or temporary custody of the Commissioner to the Office of the Mental Health Care Ombudsman on a monthly basis.

~~Chapter 175: The Board of Mental Health~~

~~§ 7301. Creation~~

~~The state board of mental health is created. It shall consist of seven persons, two of whom are physicians and one an attorney. A member may not be a trustee, officer, or employee of any institution for mental patients. Biennially the governor shall appoint, with the advice and consent of the senate, two or three members for terms of six years in such manner that three terms expire in each third biennial year and two in other biennial years. The board, with the advice of the Commissioner, shall make Department policy. Biennially or when a vacancy occurs the board shall elect a chairman and a secretary.~~

~~§ 7302. Subcommittee on institutions~~

~~The board may delegate to a subcommittee on institutions, composed of two doctors and a lawyer, its functions under sections 7305, 7306, and 7308-7313 of this title; and the action of a majority of the subcommittee shall be that of the board.~~

~~§ 7304. Persons not hospitalized~~

~~The Board shall have general jurisdiction of persons with an intellectual disability or mental illness who have been discharged from a hospital or training school by authority of the Board. It shall also have jurisdiction of persons with a mental illness or intellectual disability of the State not hospitalized, so far as concerns their physical and mental condition and their care, management, and medical treatment and shall make such orders therein as each case duly brought to its attention requires.~~

~~§ 7305. Powers of board~~

~~The board may administer oaths, summon witnesses before it in a case under investigation, and discharge by its order, in writing, any person confined as a patient in a~~

~~hospital whom it finds on investigation to be wrongfully hospitalized or in a condition to warrant discharge. The board shall discharge patients, not criminals, who have eloped from a hospital and have not been apprehended at the expiration of six months from the time of their elopement. The board shall not order the discharge of a patient without giving the superintendent of the hospital an opportunity to be heard.~~

~~§ 7309. Referrals from governor~~

~~The governor may refer the case of a patient in a hospital to the board for its investigation. The board shall investigate the case and by its order grant such relief as each case requires. If the board is without power to grant the necessary relief it shall cause proceedings to be commenced in a court of competent jurisdiction at the expense of the state, in order to obtain the necessary relief and promote the ends of justice and humanity.~~

~~§ 7310. Petition for inquiry~~

~~The attorney or guardian of a patient or any other interested party may apply to the board to inquire into the treatment and hospitalization of a patient, and the board shall take appropriate action upon the application.~~

~~§ 7311. Investigation~~

~~If, in the judgment of the board, an investigation is necessary, it shall appoint a time and place for hearing and give the patient's attorney, guardian and spouse, parent or adult child or interested party, if any, in that order, and the head of the hospital reasonable notice thereof. At the time appointed it shall conduct a hearing and make any lawful order the case requires.~~

~~§ 7312. Penalty; failure to obey summons~~

~~A person legally summoned as a witness before the board in behalf of the state, or summoned by other parties with a tender of his or her fees, which shall be the same as those allowed witnesses in a criminal division of the superior court, who wilfully and wrongfully refuses to attend or testify shall be imprisoned not more than six months or fined not more than $100.00 nor less than $10.00 or both.~~

~~§ 7313. Board shall visit institution~~

~~The board shall ascertain by examination and inquiry whether the laws relating to individuals in custody or control are properly observed and may use all necessary means to collect all desired information. It shall carefully inspect every part of the hospital or training school visited with reference to its cleanliness and sanitary condition, determine~~

~~the number of patients or students in seclusion or restraint, the diet of the patients or students, and any other matters which it considers material. It shall offer to every patient or student an opportunity for an interview with its visiting members or agents, and shall investigate those cases which in its judgment require special investigation, and particularly shall ascertain whether any individuals are retained at any hospital or training school who ought to be discharged.~~

~~§ 7314. Reciprocal agreements~~

~~The Board may enter into reciprocal agreements with corresponding state agencies of other states regarding the interstate transportation or transfer of persons with a psychiatric or intellectual disability and arrange with the proper officials in this State for the acceptance, transfer, and support of residents of this State who are temporarily detained or receiving care in public institutions of other states in accordance with the terms of such agreements.~~

~~§ 7315. Definition~~

~~As used in this chapter, the term "hospital" shall include a secure residential recovery facility as defined in subsection 7620(e) of this title.~~

Chapter 177: The Commissioner of Mental Health

§ 7401. Powers and duties

Except insofar as this part of this title specifically confers certain powers, duties, and functions upon others, the Commissioner shall be charged with its administration. The Commissioner may:

(1) with the approval of the governor, organize the Department, including the creation, rearrangement, and abolition of divisions and lesser units and control and coordinate services as to most efficiently carry out the purposes of this part;

(2) adopt, amend, and repeal and enforce rules and regulations not inconsistent with this part as are reasonably necessary for its operation;

(3) designate, control, and supervise the property, affairs, and operation of hospitals and institutions equipped and otherwise qualified to provide inpatient care and treatment for individuals who are mentally ill;

(4) supervise the operation of community mental health units;

(5) supervise the care and treatment of individuals within his or her custody <u>or temporary</u>

custody;

(6) provide for the hospitalization of mentally ill patients in designated hospitals or institutions of Vermont or negotiate and enter into contracts which shall incorporate safeguards consistent with this part of this title, with any hospital or institution for the care and treatment of patients in any other state;

(7) prescribe the form of applications, records, reports, and medical certificates required by the statutes, and the information to be contained therein and to supply them to physicians and probate division of the superior courts;

(8) require reports from the head of a hospital or other institution concerning the care of patients with a mental illness ;

(9) visit each hospital or institution and review methods of care for all patients;

(10) investigate complaints made by a patient, his or her attorney, or an interested party on his or her behalf;

(11) establish rates, charges, and fees for the care of patients in hospitals and determine ability to pay, liability for payments, and amounts to be paid and bill for and collect those amounts with the aid of the attorney general;

(12) receive gifts and bequests of real and personal estate made for the use and benefit of any state ~~hospital~~ owned and operated mental health facility, and invest any moneys so received in safe interest-bearing securities in the corporate name of ~~the hospital~~ that facility;

(13) delegate to any officer or agency of Vermont any of the duties and powers imposed upon him or her by this part of this title. The delegation of authority and responsibility shall not relieve the Commissioner of accountability for the proper administration of this part of this title;

(14) plan and coordinate the development of community services which are needed to assist children and adolescents with or at risk for a severe emotional disturbance and individuals with a mental condition or psychiatric disability to become as financially and socially independent as possible. These services shall consist of residential, vocational, rehabilitative, day treatment, inpatient, outpatient, and emergency services, as well as client assessment, prevention, family, and individual support services, and such other services as may be required by federal law or regulations;

(15) contract with community mental health centers to assure that children and adolescents with or at risk for a severe emotional disturbance or individuals with a mental

condition or psychiatric disability can receive information, referral, and assistance in obtaining those community services which they need and to which they are lawfully entitled;

(16) contract with accredited educational or health care institutions for psychiatric services at ~~the Vermont State Hospital or its successor in interest~~ Vermont Psychiatric Care Hospital or secure residential recovery facility;

(17) ensure the provision of services to children and adolescents with or at risk for a severe emotional disturbance in coordination with the Secretary of Education and the Commissioner for Children and Families in accordance with the provisions of 33 V.S.A. chapter 43;

(18) ensure the development of community-based prevention and early intervention services for children and adults and ensure the coordination of these services throughout all parts of the public and private health care delivery systems;

(19) ensure the development of chronic care services, addressing mental health and substance abuse, for children and adults and ensure the coordination of these services with other chronic care initiatives, including the Blueprint for Health, and the care coordination and case management programs of the Department of Vermont health access;

(20) ensure the coordination of mental health, physical health, and substance abuse services provided by the public and private health care delivery systems;

(21) ensure the coordination of public mental health and substance abuse services with mental health and substance abuse services offered through the private health care delivery system, including services offered by primary care physicians; and

(22) oversee and seek to have ~~patients~~ residents receive treatment in secure residential recovery facilities as defined in subsection 7620(e) of this title.

§ 7402. Records and reports

The Commissioner shall keep records of all ~~commitments and admissions to a hospital~~ persons placed in his or her custody or temporary custody and shall meet any reporting requirements as set forth in law ~~secure compliance with the laws relating thereto. The Commissioner shall report biennially to the Governor and the General Assembly on the condition of hospitals, on the physical and medical treatment of patients therein, on the need for community services to former patients and persons with a mental condition or psychiatric disability not hospitalized and on any other matters the Commissioner deems advisable~~.

§ 7404. Accounts of receipts and expenditures

The Commissioner shall cause to be kept a true and just account of all receipts and expenditures. His or her report shall contain the account together with a tabulated statement of the work done by the state hospital during the preceding two years.

§ 7405. Property in trust

The Commissioner may take and hold in trust for the state any grant or devise of land or donation or bequest of money, or other personal property, to be applied to the maintenance of mentally ill persons.

§ 7406. Contracts

The Commissioner, with the approval of the governor, may enter into contracts with the federal government or its agencies for the care, treatment or observation of those mentally ill entitled to support by the federal government or agency as the Commissioner may deem desirable. The receipts from those contracts shall be paid by the ~~superintendent~~ Commissioner to the State Treasurer to be applied to the general fund.

§ 7407. Mental health advisor

The Commissioner, upon the request of the Commissioner of Motor Vehicles, shall designate an appropriate professional member of the Department to serve as advisor to the Commissioner of motor vehicles on the mental health aspects of the licensing of motor vehicle operators.

§ 7408. Electroconvulsive therapy

The Commissioner shall oversee the use of electroconvulsive therapy in Vermont and may adopt rules to govern the practice of electroconvulsive therapy. The Commissioner's duties shall include:

(1) establishment of a uniform informed consent process, forms, and materials;

(2) oversight and monitoring of all facilities administering electroconvulsive therapy; and

(3) the collection of statistical data on the use of electroconvulsive therapy from all treating facilities.

Chapter 179: Admission Procedures

§ 7501. Authority to receive patients

The head of a hospital which has been officially designated by the Commissioner may receive therein for observation, diagnosis, care, and treatment any individual whose admission is sought on proper application.

§ 7502. Control and treatment of patients

A person admitted to a hospital shall be subject to the control and treatment of the head of the hospital ~~and the board~~ until his or her condition warrants his or her release, or until he or she has been lawfully removed or otherwise discharged.

§ 7503. Application for voluntary admission

(a) Any person 14 years of age or over may apply for voluntary admission to a designated hospital for examination and treatment.

(b) Before ~~the person~~ an adult or person over 14 years of age may be admitted as a voluntary patient he or she shall give his or her consent in writing on a form adopted by the Department. The consent shall include a representation that the person understands that his or her treatment will involve inpatient status, that he or she desires to be admitted to the hospital, and that he or she consents to admission voluntarily, without any coercion or duress.

(c) If the person is under 14 years of age, he or she may be admitted as a voluntary patient ~~if he or she consents to admission, as provided in subsection (b) of this section, and~~ if a parent or guardian makes written application.

§ 7504. Application and certificate for emergency examination

(a) Upon written application by an interested party made under the pains and penalties of perjury and accompanied by a certificate by a licensed ~~physician~~ independent practitioner who is not the applicant, a person shall be placed in the custody or temporary custody of the Commissioner and held for admission to a hospital or other designated facility for an emergency examination to determine if he or she is a person in need of treatment. The application and certificate shall set forth the facts and circumstances that constitute the need for an emergency examination and that show that the person is a person in need of treatment.

(b) The application and certificate shall be authority for transporting the person to a hospital for an emergency examination, as provided in section 7511 of this title.

(c) For the purposes of admission of an individual to a designated hospital or other facility for care and treatment under this section, a head of a hospital, as provided in subsection (a) of this section, may include a person designated in writing by the head of the hospital to discharge the authority granted in this section. A designated person must be an official hospital administrator, supervisory personnel, or a licensed ~~physician~~ independent practitioner on duty on the ~~hospital~~ premises other than the certifying ~~physician~~ practitioner under subsection (a) of this section.

§ 7505. Warrant and certificate for emergency examination

(a) In emergency circumstances where certification by a ~~physician~~ licensed independent practitioner is not available without serious and unreasonable delay, and when personal observation or a reliable report, in those situations in which the applicant explains why personal observation cannot reasonably be made, of the conduct of a person constitutes reasonable grounds to believe that the person is a person in need of treatment, and he or she presents an immediate risk of serious injury to himself or herself or others if not restrained, a law enforcement officer or mental health professional may make an application, not accompanied by a physician's certificate, to any Superior judge for a warrant for an emergency examination.

(b) The law enforcement officer or mental health professional may take the person into temporary custody and shall apply to the Court without delay for the warrant. The application shall be the sole authority necessary for the law enforcement officer to enter the person's residence or the residence of another where the person is located to apprehend the person and take the person into temporary custody.

(c) If the judge is satisfied that a ~~physician's~~ licensed independent practitioner's certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an emergency examination, he or she may order the person to submit to an evaluation by a ~~physician~~ licensed independent practitioner for that purpose.

(d) If necessary, the Court may order the law enforcement officer or mental health professional to transport the person to a hospital or other designated facility for an evaluation by a ~~physician~~ licensed independent practitioner to determine if the person should be certified for an emergency examination.

(e) A person transported pursuant to subsection (d) of this section shall be evaluated as soon as possible after arrival at the hospital or other designated facility. If after evaluation the licensed ~~physician~~ independent practitioner determines that the person is a person in need of treatment, he or she shall issue an initial certificate that sets forth the facts and circumstances constituting the need for an emergency examination and showing

that the person is a person in need of treatment. Once the ~~physician~~ licensed independent practitioner has issued the initial certificate, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the ~~physician~~ licensed independent practitioner does not certify that the person is a person in need of treatment, he or she shall immediately discharge the person and cause him or her to be returned to the place from which he or she was taken, or to such place as the person reasonably directs.

§ 7508. Emergency examination and second certification

(a) When an initial certification is issued for an emergency examination of a person in accordance with section 7504 or subsection 7505(e) of this title, he or she shall be examined and certified by a psychiatrist as soon as practicable, but not later than 24 hours after initial certification.

(b) If the person is held for admission on an application and ~~physician's~~ licensed independent practitioner's certificate, the examining psychiatrist shall not be the same ~~physician~~ licensed independent practitioner who signed the certificate.

(c) If the psychiatrist does not issue a second certification stating that the person is a person in need of treatment, he or she shall immediately discharge or release the person and cause him or her to be returned to the place from which he or she was taken or to such place as the person reasonably directs.

(d) If the psychiatrist does issue a second certification that the person is a person in need of treatment, the person may continue to be held for an additional 72 hours, at which time the person shall be discharged or released, unless within that period:

(1) the person has accepted voluntary admission under section 7503 of this title; or

(2) an application for involuntary treatment is filed with the appropriate court under section 7612 of this title, in which case the patient shall continue to be held pending the Court's finding of probable cause on the application.

(e)(1)(A) A person shall be deemed to be in the temporary custody of the Commissioner when the first of the following occurs:

(i) a physician files an initial certification for the person while the person is in a hospital; or

(ii) a person is certified by a psychiatrist to be a person in need of treatment during an emergency examination.

(B) Temporary custody under this subsection shall continue until the Court issues an order pursuant to subsection 7617(b) of this title or the person is discharged or released.

(2) The Commissioner shall make every effort to ensure that a person held for an emergency examination pending a hospital admission is receiving temporary care and treatment that:

(A) uses the least restrictive manner necessary to protect the safety of both the person and the public;

(B) respects the privacy of the person and other patients; and

(C) prevents physical and psychological trauma.

(3) All persons admitted or held for admission shall receive a notice of rights as provided for in section 7701 of this title, which shall include contact information for Vermont Legal Aid, the Office of the Mental Health Care Ombudsman, and the mental health patient representative. The Department of Mental Health shall develop and regularly update informational material on available peer-run support services, which shall be provided to all persons admitted or held for admission.

(4) A person held for an emergency examination may be admitted to an appropriate hospital at any time.

§ 7509. Treatment; right of access

(a) Upon admission to the hospital pursuant to section 7503, 7508, 7617, or 7624 of this title, the person shall be treated with dignity and respect and shall be given such medical and psychiatric treatment as is indicated.

(b) All persons admitted or held for admission shall be given the opportunity, subject to reasonable limitations, to communicate with others, including visits by a peer or other support person designated by the person, presence of the support person at all treatment team meetings the person is entitled to attend, the reasonable use of a telephone, and the reasonable use of electronic mail and the Internet.

(c) The person shall be requested to furnish the names of persons he or she may want notified of his or her hospitalization and kept informed of his or her status. The head of the hospital shall see that such persons are notified of the status of the patient, how he or she may be contacted and visited, and how they may obtain information concerning him or her.

§ 7510. Preliminary hearing

(a) Within five days after a person is admitted to a designated hospital for emergency examination, he or she may request the ~~criminal~~ family division of the superior court to conduct a preliminary hearing to determine whether there is probable cause to believe that he or she was a person in need of treatment at the time of his or her admission.

(b) The court shall conduct the hearing within three working days of the filing of the request. The court shall cause timely notice of the preliminary hearing to be given to the patient or his or her attorney, the hospital and the attorney for the applicant.

(c) The individual has the right to be present and represented by legal counsel at the preliminary hearing.

(d) If probable cause to believe that the individual was a person in need of treatment at the time of his or her admission is established at the preliminary hearing, the individual shall be ordered held for further proceedings in accordance with the law. If probable cause is not established, the individual shall be ordered discharged from the hospital and the court shall order him or her returned to the place from which he or she was transported or to his or her home.

(e) Upon a showing of need the court may grant a reasonable continuance to either the patient's attorney or the attorney for the state.

§ 7511. Transportation

(a) The Commissioner shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a person subject to this chapter to and from any inpatient setting, including escorts within a designated hospital or ~~the Vermont State Hospital or its successor in interest~~ Vermont Psychiatric Care Hospital or otherwise being transported under the jurisdiction of the Commissioner in any manner which:

(1) prevents physical and psychological trauma;

(2) respects the privacy of the individual; and

(3) represents the least restrictive means necessary for the safety of the patient.

(b) The Commissioner shall have the authority to designate the professionals or law enforcement officers who may authorize the method of transport of patients under the Commissioner's care and custody.

(c) When a professional or law enforcement officer designated pursuant to subsection (b) of this section decides an individual is in need of secure transport with mechanical restraints, the reasons for such determination shall be documented in writing.

(d) It is the policy of the State of Vermont that mechanical restraints are not routinely used on persons subject to this chapter unless circumstances dictate that such methods are necessary.

Chapter 181: Judicial Proceedings

§ 7611. Involuntary treatment

No person may be made subject to involuntary treatment unless he or she is found to be a person in need of treatment or a patient in need of further treatment.

§ 7612. Application for involuntary treatment

(a) An interested party may, by filing a written application, commence proceedings for the involuntary treatment of an individual by judicial process.

(b) The application shall be filed in the Family Division of the Superior Court.

(c) If the application is filed under section 7508 or 7620 of this title, it shall be filed in the unit of the Family Division of the Superior Court in which the hospital is located. In all other cases, it shall be filed in the unit in which the proposed patient resides. In the case of a nonresident, it may be filed in any unit. The Court may change the venue of the proceeding to the unit in which the proposed patient is located at the time of the trial.

(d) The application shall contain:

(1) The name and address of the applicant.

(2) A statement of the current and relevant facts upon which the allegation of mental illness and need for treatment is based. The application shall be signed by the applicant under penalty of perjury.

(e) The application shall be accompanied by:

(1) a certificate of a licensed ~~physician~~ independent practitioner, which shall be executed under penalty of perjury stating that he or she has examined the proposed patient within five days of the date the petition is filed, and is of the opinion that the proposed patient is a person in need of treatment, including the current and relevant facts and circumstances

upon which the ~~physician's~~ licensed independent practitioner's opinion is based; or

(2) a written statement by the applicant that the proposed patient refused to submit to an examination by a licensed ~~physician~~ licensed independent practitioner.

(f) Before an examining ~~physician~~ licensed independent practitioner completes the certificate of examination, he or she shall consider available alternative forms of care and treatment that might be adequate to provide for the person's needs, without requiring hospitalization. The examining ~~physician~~ licensed independent practitioner shall document on the certificate the specific alternative forms of care and treatment that he or she considered and why those alternatives were deemed inappropriate, including information on the availability of any appropriate alternatives.

§ 7612a. Probable cause review

(a) Within three days after an application for involuntary treatment is filed, the Family Division of the Superior Court shall conduct a review to determine whether there is probable cause to believe that the person was a person in need of treatment at the time of his or her admission. The review shall be based solely on the application for an emergency examination and accompanying certificate by a licensed physician and the application for involuntary treatment.

(b) If, based on a review conducted pursuant to subsection (a) of this section, the Court finds probable cause to believe that the person was a person in need of treatment at the time of his or her admission, the person shall be ordered held in the temporary custody of the Commissioner for further proceedings in accordance with Part 8 of this title. If probable cause is not established, the person shall be ordered discharged or released from the hospital and returned to the place from which he or she was transported or to such place as the person may reasonably direct.

(c) An application for involuntary treatment shall not be dismissed solely because the probable cause review is not completed within the time period required by this section if there is good cause for the delay.

§ 7613. Notice--Appointment of counsel

(a) When the application is filed, the court shall appoint counsel for the proposed patient, and transmit a copy of the application, the physician's certificate, if any, and a notice of hearing to the proposed patient, his or her attorney, guardian, ~~or any person having custody and control of the proposed patient,~~ the state's attorney, or the attorney general, and any other person the court believes has a concern for the proposed patient's welfare. A copy of the notice of hearing shall also be transmitted to the applicant and certifying physician.

(b) The notice of hearing shall set forth the date and time of the hearing and shall contain a list of the proposed patient's rights at the hearing.

(c) If the court has reason to believe that notice to the proposed patient will be likely to cause injury to the proposed patient or others, it shall direct the proposed patient's counsel to give the proposed patient oral notice prior to written notice under circumstances most likely to reduce likelihood of injury.

§ 7614. Psychiatric examination

As soon as practicable after notice of the commencement of proceedings is given, the court on its own motion or upon the motion of the proposed patient or his or her attorney or the State of Vermont shall authorize examination of the proposed patient by a psychiatrist other than the physician making the original certification. The examination and subsequent report or reports shall be paid for by the State of Vermont. The physician shall report his or her finding to the party requesting the report or to the court if it requested the examination.

§ 7615. Hearing on application for involuntary treatment

(a)(1) Upon receipt of the application, the Court shall set a date for the hearing to be held within 10 days from the date of the receipt of the application or 20 days from the date of the receipt of the application if a psychiatric examination is ordered under section 7614 of this title unless the hearing is continued by the Court pursuant to subsection (b) of this section.

(2)(A) The applicant or a person who is certified as a person in need of treatment pursuant to section 7508 of this title may file a motion to expedite the hearing. The motion shall be supported by an affidavit, and the Court shall rule on the motion on the basis of the filings without holding a hearing. The Court:

(i) shall grant the motion if it finds that the person demonstrates a significant risk of causing the person or others serious bodily injury as defined in 13 V.S.A. § 1021 even while hospitalized, and clinical interventions have failed to address the risk of harm to the person or others;

(ii) may grant the motion if it finds that the person has received involuntary medication pursuant to section 7624 of this title during the past two years and, based upon the person's response to previous and ongoing treatment, there is good cause to believe that additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence.

(B) If the Court grants the motion for expedited hearing pursuant to this subdivision, the hearing shall be held within ten days from the date of the order for expedited hearing.

(3) If a hearing on the application for involuntary treatment has not occurred within 60 days from the date of the Court's receipt of the application, the Commissioner shall request that the Court and both parties' attorneys provide the reasons for the delay. The Commissioner shall submit a report to the Court, the Secretary of Human Services, and the patient's attorney that either explains why the delay was warranted or makes recommendations as to how delays of this type can be avoided in the future.

(b)(1) For hearings held pursuant to subdivision (a)(1) of this section, the Court may grant each party a onetime extension of up to seven days for good cause.

(2) The Court may grant one or more additional seven-day continuances if:

(A) the Court finds that the proceeding or parties would be substantially prejudiced without a continuance; or

(B) the parties stipulate to the continuance.

(c) The hearing shall be conducted according to the Vermont Rules of Evidence, and to an extent not inconsistent with this part, the Vermont Rules of Civil Procedure shall be applicable.

(d) The applicant and the proposed patient shall have a right to appear at the hearing to testify. The attorney for the State and the proposed patient shall have the right to subpoena, present, and cross-examine witnesses, and present oral arguments. The Court may, at its discretion, receive the testimony of any other person.

(e) The proposed patient may at his or her election attend the hearing, subject to reasonable rules of conduct, and the Court may exclude all persons, except a peer or other support person designated by the proposed patient, not necessary for the conduct of the hearing.

§ 7616. Appearance by state; burden of proof

(a) The State shall appear and be represented by the state's attorney for the county in which the hearing takes place or by the attorney general at his or her discretion.

(b) The State shall have the burden of proving its case by clear and convincing evidence.

(c) The attorney for the State shall have the authority to dismiss the application at any stage of the proceeding.

§ 7617. Findings; order

(a) If the court finds that the proposed patient was not a person in need of treatment at the time of admission or application or is not a patient in need of further treatment at the time of the hearing, the court shall enter a finding to that effect and shall dismiss the application.

(b) If the proposed patient is found to have been a person in need of treatment at the time of admission or application and a patient in need of further treatment at the time of the hearing, the court may order the person:

(1) hospitalized in a designated hospital;

(2) hospitalized in any ~~other~~ public or private hospital if he or she and the hospital agree; or

(3) to undergo a program of treatment other than hospitalization.

(c) Prior to ordering any course of treatment, the court shall determine whether there exists an available program of treatment for the person which is an appropriate alternative to hospitalization. The court shall not order hospitalization without a thorough consideration of available alternatives.

(d) Before making its decision, the court shall ~~order~~ consider testimony by an appropriate representative of a hospital, a community mental health agency, public or private entity or agency, or a suitable person, who shall assess the availability and appropriateness for the individual of treatment programs other than hospitalization.

(e) Prior to ordering the hospitalization of a person, the court shall inquire into the adequacy of treatment to be provided to the person by the hospital. Hospitalization shall not be ordered unless the hospital in which the person is to be hospitalized can provide him or her with treatment which is adequate and appropriate to his or her condition.

(f) Preference between available hospitals shall be given to the hospital which is located nearest to the person's residence except when the person requests otherwise or there are other compelling reasons for not following the preference.

§ 7618. Order; nonhospitalization

(a) If the court finds that a treatment program other than hospitalization is adequate to meet the person's treatment needs, the court shall order the person to receive whatever treatment other than hospitalization is appropriate for a period of 90 days.

(b) If at any time during the specified period it comes to the attention of the court, either that the patient is not complying with the order, or that the alternative treatment has not been adequate to meet the patient's treatment needs, the court may, after proper hearing:

(1) Consider other alternatives, modify its original order, and direct the patient to undergo another program of alternative treatment for the remainder of the 90-day period; or

(2) Enter a new order directing that the patient be hospitalized for the remainder of the 90-day period.

§ 7618a. Order; secure residential recovery facility

(a) If the Commissioner seeks to have the patient receive treatment in a secure residential recovery facility, the application for an order authorizing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by subsection (b) of section 7620, a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment for the patient's condition can be provided safely only in a secure residential recovery facility.

(b) If the treatment plan proposed by the Commissioner for a patient in need of further treatment includes admission to a secure residential recovery facility, the court may at any time, on its own motion or on motion of an interested party, review the need for treatment at the secure residential recovery facility.

(c) As used in this section:

(1) "Secure," when describing a residential facility, means that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.

(2) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who does remain in need of treatment within a secure setting for an extended period of time. A secure residential recovery facility shall not be used for any purpose other than the purposes permitted by this section.

§ 7619. Order; hospitalization

An initial order of hospitalization shall be for a period of 90 days from the date of the

hearing.

§ 7620. Application for continued treatment

(a) If, prior to the expiration of any order issued in accordance with section 7623 of this title, the Commissioner believes that the condition of the patient is such that the patient continues to require treatment, the Commissioner shall apply to the court for a determination that the patient is a patient in need of further treatment and for an order of continued treatment.

(b) An application for an order authorizing continuing treatment shall contain a statement setting forth the reasons for the Commissioner's determination that the patient is a patient in need of further treatment, a statement describing the treatment program provided to the patient, and the results of that course of treatment.

(c) Any order of treatment issued in accordance with section 7623 of this title shall remain in force pending the court's decision on the application.

~~(d) If the Commissioner seeks to have the patient receive the further treatment in a secure residential recovery facility, the application for an order authorizing continuing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by subsection (b) of this section, a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment for the patient's condition can be provided safely only in a secure residential recovery facility~~.

~~(e) As used in this chapter:~~

~~(1) "Secure," when describing a residential facility, means that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.~~

~~(2) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who does remain in need of treatment within a secure setting for an extended period of time. A secure residential recovery facility shall not be used for any purpose other than the purposes permitted by this section.~~

§ 7621. Hearing on application for continued treatment; orders

(a) The hearing on the application for continued treatment shall be held in accordance with the procedures set forth in sections 7613, 7614, 7615, and 7616 of this title.

(b) If the court finds that the patient is a patient in need of further treatment ~~and requires hospitalization~~ it shall order ~~hospitalization~~ continued treatment for up to one year.

(c) ~~If the court finds that the patient is a patient in need of further treatment but does not require hospitalization, it shall order nonhospitalization for up to one year~~. ~~If the treatment plan proposed by the Commissioner for a patient in need of further treatment includes admission to a secure residential recovery facility, the court may at any time, on its own motion or on motion of an interested party, review the need for treatment at the secure residential recovery facility.~~

(d) If at any time during the period of nonhospitalization ordered under subsection (c) of this section, it comes to the attention of the court~~,~~ that the person is not complying with the order, or that the alternative treatment has not been adequate to meet the patient's treatment needs, the court may, after proper hearing:

(1) Consider other treatments not involving hospitalization, modify its original order, and direct the patient to undergo another program of alternative treatment for an indeterminate period, up to the expiration date of the original order; or

(2) Order that the patient be hospitalized, up to the expiration date of the original order.

(e) If the court finds that the patient is not a patient in need of further treatment, it shall order the patient discharged.

(f) This section shall not be construed to prohibit the court from issuing subsequent orders after a new application is filed pursuant to section 7620 of this title.

§ 7622. Expert testimony

(a) A mental health professional testifying at hearings conducted under this part may, if appropriately qualified, give opinion testimony and, notwithstanding 12 V.S.A. § 1612, describe any information which he or she acquired in attending the patient.

(b) The facts or data in the particular case, upon which an expert bases an opinion or inference, may be those perceived by or made known to him or her at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. Such testimony shall not be limited in scope by V.R.E. 703.

§ 7623. Orders; custody

All court orders of hospitalization, nonhospitalization and continued treatment shall be

directed to the Commissioner and shall admit the patient to his or her care and custody for the period specified.

§ 7624. Application for involuntary medication

(a) The Commissioner may commence an action for the involuntary medication of a person who is refusing to accept psychiatric medication and meets any one of the following six conditions:

(1) has been placed in the Commissioner's care and custody pursuant to section 7619 of this title or subsection 7621(b) of this title;

(2) has previously received treatment under an order of hospitalization and is currently under an order of nonhospitalization, including a person on an order of nonhospitalization who resides in a secure residential recovery facility;

(3) has been committed to the custody of the Commissioner of Corrections as a convicted felon and is being held in a correctional facility which is a designated facility pursuant to section 7628 of this title and for whom the Departments of Corrections and of Mental Health have determined jointly that involuntary medication would be appropriate pursuant to 28 V.S.A. § 907(4)(H);

(4) has an application for involuntary treatment pending for which the Court has granted a motion to expedite pursuant to subdivision 7615(a)(2)(A)(i) of this title;

(5)(A) has an application for involuntary treatment pending;

(B) waives the right to a hearing on the application for involuntary treatment until a later date; and

(C) agrees to proceed with an involuntary medication hearing without a ruling on whether he or she is a person in need of treatment; or

(6) has had an application for involuntary treatment pending pursuant to subdivision 7615(a)(1) of this title for more than 26 days without a hearing having occurred and the treating psychiatrist certifies, based on specific behaviors and facts set forth in the certification, that in his or her professional judgment there is good cause to believe that:

(A) additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence; and

(B) serious deterioration of the person's mental condition is occurring.

(b)(1) Except as provided in subdivisions (2), (3), and (4) of this subsection, an application for involuntary medication shall be filed in the Family Division of the Superior Court in the county in which the person is receiving treatment.
(2) If the application for involuntary medication is filed pursuant to subdivision (a)(4) of this section:

(A) the application shall be filed in the county in which the application for involuntary treatment is pending; and

(B) the Court shall consolidate the application for involuntary treatment with the application for involuntary medication and rule on the application for involuntary treatment before ruling on the application for involuntary medication.

(3) If the application for involuntary medication is filed pursuant to subdivisions (a)(5) or (a)(6) of this section, the application shall be filed in the county in which the application for involuntary treatment is pending.

(4) Within 72 hours of the filing of an application for involuntary medication pursuant to subdivision (a)(6) of this section, the Court shall determine, based solely upon a review of the psychiatrist's certification and any other filings, whether the requirements of that subdivision have been established. If the Court determines that the requirements of subdivision (a)(6) of this section have been established, the Court shall consolidate the application for involuntary treatment with the application for involuntary medication and hear both applications within ten days of the date that the application for involuntary medication is filed. The Court shall rule on the application for involuntary treatment before ruling on the application for involuntary medication. Subsection 7615(b) of this title shall apply to applications consolidated pursuant to this subdivision.

(c) The application shall include a certification from the treating physician, executed under penalty of perjury, that includes the following information:

(1) the nature of the person's mental illness;

(2) that the person is refusing medication proposed by the physician;

(3) that the person lacks the competence to decide to accept or refuse medication and appreciate the consequences of that decision;

(4) the necessity for involuntary medication;

(5) any proposed medication, including the method, dosage range, and length of administration for each specific medication;

(6) a statement of the risks and benefits of the proposed medications, including the likelihood and severity of adverse side effects and its effect on:

(A) the person's prognosis with and without the proposed medications; and

(B) the person's health and safety, including any pregnancy;

(7) the current relevant facts and circumstances, including any history of psychiatric treatment and medication, upon which the physician's opinion is based;

(8) what alternate treatments have been proposed by the doctor, the patient, or others, and the reasons for ruling out those alternatives, including information on the availability of any appropriate alternatives; and

(9) whether the person has executed an advance directive in accordance with the provisions of chapter 231 of this title, and the identity of the agent or agents designated by the advance directive.

(d) A copy of the advance directive, if available, shall be attached to the application.

§ 7625. Hearing on application for involuntary medication; burden of proof

(a) Unless consolidated with an application for involuntary treatment pursuant to subdivision 7624(b)(2) or (b)(4) of this title, a hearing on an application for involuntary medication shall be held within seven days of filing and shall be conducted in accordance with sections 7613, 7614, and 7616 and subsections 7615(b)-(e) of this title.

(b) In a hearing conducted pursuant to this section, section 7626, or section 7627 of this title, the Commissioner has the burden of proof by clear and convincing evidence.

(c) In determining whether or not the person is competent to make a decision regarding the proposed treatment, the Court shall consider whether the person is able to make a decision and appreciate the consequences of that decision.

§ 7626. Advance directive

(a) If a person who is the subject of an application filed under section 7624 of this title has executed an advance directive in accordance with the provisions of chapter 231 of this title, the Court shall suspend the hearing and enter an order pursuant to subsection (b) of this section, if the Court determines that:

(1) the person is refusing to accept psychiatric medication;

(2) the person is not competent to make a decision regarding the proposed treatment; and

(3) the decision regarding the proposed treatment is within the scope of the valid, duly executed advance directive.

(b) An order entered under subsection (a) of this section shall authorize the Commissioner to administer treatment to the person, including involuntary medication in accordance with the direction set forth in the advance directive or provided by the agent or agents acting within the scope of authority granted by the advance directive. If hospitalization is necessary to effectuate the proposed treatment, the Court may order the person to be hospitalized.

(c) [Repealed by 2013, Adj. Sess., No. 192, § 14, eff. July 1, 2014.]

(d)(1) The Commissioner of Mental Health shall develop a protocol for use by designated hospitals for the purpose of educating hospital staff on the use and applicability of advance directives pursuant to chapter 231 of this title and other written or oral expressions of treatment preferences pursuant to subsection 7627(b) of this title.

(2) Prior to a patient's discharge or release, a hospital shall provide information to a patient in the custody or temporary custody of the Commissioner regarding advance directives, including relevant information developed by the Vermont Ethics Network and Office of the Mental Health Care Ombudsman.

§ 7627. Court findings; orders

(a) The court shall issue an order regarding all possible findings pursuant to this section, and for persons subject to an application pursuant to subdivision 7624(a)(3) of this title the court shall first find that the person is a person in need of treatment as defined by subdivision 7101(17) of this title.

(b) If a person who is the subject of an application filed under section 7625 of this title has not executed an advance directive, the Court shall follow the person's competently expressed written or oral preferences regarding medication, if any, unless the Commissioner demonstrates that the person's medication preferences have not led to a significant clinical improvement in the person's mental state in the past within an appropriate period of time.

(c) If the Court finds that there are no medication preferences or that the person's medication preferences have not led to a significant clinical improvement in the person's mental state in the past within an appropriate period of time, the Court shall consider at a minimum, in addition to the person's expressed preferences, the following factors:

(1) the person's religious convictions and whether they contribute to the person's refusal to accept medication;

(2) the impact of receiving medication or not receiving medication on the person's relationship with his or her family or household members whose opinion the Court finds relevant and credible based on the nature of the relationship;

(3) the likelihood and severity of possible adverse side effects from the proposed medication;

(4) the risks and benefits of the proposed medication and its effect on:

(A) the person's prognosis; and

(B) the person's health and safety, including any pregnancy; and

(5) the various treatment alternatives available, which may or may not include medication.

(d) As a threshold matter, the Court shall consider the person's competency. If the Court finds that the person is competent to make a decision regarding the proposed treatment or that involuntary medication is not supported by the factors in subsection (c) of this section, the Court shall enter a finding to that effect and deny the application.

(e) As a threshold matter, the Court shall consider the person's competency. If the Court finds that the person is incompetent to make a decision regarding the proposed treatment and that involuntary medication is supported by the factors in subsection (c) of this section, the Court shall make specific findings stating the reasons for the involuntary medication by referencing those supporting factors.

(f)(1) If the Court grants the application, in whole or in part, the Court shall enter an order authorizing the Commissioner to administer involuntary medication to the person. The order shall specify the types of medication, the permitted dosage range, length of administration, and method of administration for each. The order for involuntary medication shall not include electric convulsive therapy, surgery, or experimental medications. A long-acting injection shall not be ordered without clear and convincing evidence, particular to the patient, that this treatment is the most appropriate under the circumstances.

(2) The order shall require the person's treatment provider to conduct weekly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and whether the patient has become competent pursuant to subsection 7625(c) of this title and shall also require the person's

treatment provider to document this review in detail in the patient's chart. The person's treatment provider shall notify the Department when he or she determines that the patient has regained competence. Within two days of receipt, the Department shall provide a copy of the notice to the patient's attorney.

(g) For a person receiving treatment pursuant to an order of hospitalization, the Commissioner may administer involuntary medication as authorized by this section to the person for up to 90 days, unless the Court finds that an order is necessary for a longer period of time. Such an order shall not be longer than the duration of the current order of hospitalization. If at any time the treating psychiatrist finds that a person subject to an order for involuntary medication has become competent pursuant to subsection 7625(c) of this title, the order shall no longer be in effect.

(h) For a person who had received treatment under an order of hospitalization and is currently receiving treatment pursuant to an order of nonhospitalization, if the court finds that without an order for involuntary medication there is a substantial probability that the person would continue to refuse medication and as a result would pose a danger of harm to self or others, the court may order hospitalization of the person for up to 72 hours to administer involuntary medication as ordered under this section.

(i) The court may authorize future 72-hour hospitalizations of a person subject to an order under subsection (h) of this section to administer involuntary medication for 90 days following the initial hospitalization, unless the court finds that an involuntary medication order is necessary for a longer period of time. Such an order shall not be longer than the duration of the current order of nonhospitalization.

(j) A future administration of involuntary medication authorized by the court under subsection (i) of this section shall occur as follows:

(1) The treating physician shall execute and file with the Commissioner a certification executed under penalty of perjury that states all the following:

(A) The person has refused medication.

(B) The person is not competent to make a decision regarding medication and to appreciate the consequences.

(C) The proposed medications, the dosage range, length of administration, and method of administration.

(D) The substantial probability that in the near future the person will pose a danger of harm to self or others if not hospitalized and involuntarily medicated.

(2) Depending on the type of medication ordered, the Commissioner shall provide two to 14-days' notice, as set forth in the initial court order, to the court, the person and the person's attorney. The notice shall be given within 24 hours of receipt by the Commissioner of the physician's certification and shall state that the person may request an immediate hearing to contest the order. The person may be hospitalized in a designated hospital on the date specified in the notice for up to 72 hours in order to administer involuntary medication.

(k) An order for involuntary medication issued under this section shall be effective concurrently with the current order of commitment issued pursuant to section 7623 of this title.

(l) The treating physician shall provide written notice to the court to terminate the order when involuntary medication is no longer necessary.

(m) At any time, the person may petition the court for review of the order.

(n) As used in this section “household members” means persons living together or sharing occupancy.

§ 7628. Protocol

The Department of Mental Health shall develop and adopt by rule a strict protocol to ensure the health, safety, dignity and respect of patients subject to administration of involuntary psychiatric medications in any designated hospital. This protocol shall be followed by all designated hospitals administering involuntary psychiatric medications.

§ 7629. Legislative intent

(a) It is the intention of the General Assembly to recognize the right of a legally competent person to determine whether or not to accept medical treatment absent an emergency or a determination that the person is incompetent and lacks the ability to make a decision and appreciate the consequences.

(b) The General Assembly adopts the goal of high-quality, patient-centered health care, which the Institute of Medicine defines as “providing care that is respectful of and responsive to individual patient preferences, needs, and values and ensuring that patient values guide all clinical decisions.” A substitute decision-maker is sometimes necessary to make a decision about care when a person is incompetent and lacks the ability to make a decision and appreciate the consequences. Even when a person lacks competence, health care that a person is opposing should be avoided whenever possible because the distress and insult to human dignity that results from compelling a person to participate in medical treatment against his or her will are real, regardless of how poorly the person

may understand the decision.

(c) It is the policy of the General Assembly to work toward a mental health system that does not require coercion or the use of involuntary medication.

(d) This chapter protects the rights and values described in this section through a judicial process to determine competence prior to an order for nonemergency involuntary medication and by limiting the duration of an order for involuntary treatment to no more than one year. The least restrictive order consistent with the person's right to adequate treatment shall be provided in all cases.

Chapter 183: Care and Treatment

§ 7701. Notice of rights

The head of a hospital shall provide reasonable means and arrangements, including the posting of excerpts from relevant statutes, for informing patients of their right to discharge and other rights and for assisting them in making and presenting requests for discharge.

§ 7703. Treatment

(a) Outpatient or partial hospitalization shall be preferred to inpatient treatment. Emergency involuntary treatment shall be undertaken only when clearly necessary. Involuntary treatment shall be utilized only if voluntary treatment is not possible.

(b) The Department shall establish minimum standards for adequate treatment as provided in this section, including requirements that, when possible, psychiatric unit staff be used as the primary source to implement emergency involuntary procedures such as seclusion and restraint.

§ 7704. Mechanical restraints

Mechanical restraints shall not be applied to a patient unless it is determined by the head of the hospital or his or her designee to be required by the medical needs of the patient or the hospital. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the patient under the signature of the head of the hospital or his or her designee.

§ 7705. Communication and visitation

(a) Subject to the general rules and regulations of the hospital and except to the extent that the head of the hospital determines that it is necessary for the medical welfare or

needs of the patient or the hospital to impose restrictions, every patient is entitled:

(1) to communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the hospital;

(2) to receive visitors and to make and receive telephone calls; and

(3) to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote on his or her own initiative, unless he or she has been adjudicated incompetent and has not been restored to legal capacity.

(b) Notwithstanding any limitations or restrictions authorized by this section on the right of communication, every patient is entitled to communicate by sealed mail with the board, the Commissioner, his or her attorney, his or her clergyman, and the district judge, if any, who ordered his or her hospitalization.

§ 7706. Legal competence

No determination that a person requires treatment and no order of the court authorizing hospitalization or alternative treatment shall lead to a presumption of legal incompetence for matters other than treatment.

§ 7707. Record of restrictions

Any limitation imposed by the head of a hospital on the exercise of civil rights by a patient and the reasons for the limitation shall be made a part of the clinical record of the patient.

§ 7708. Surgical operations

If ~~the superintendent finds that~~ a patient ~~supported by the state~~ in the custody of the Commissioner requires a surgical operation ~~or that a surgical operation would promote the possibility of his or her discharge from the hospital, the~~ ~~superintendent~~ the Commissioner, with the consent of the patient, his or her attorney, or his or her legally appointed guardian, if any, ~~or next of kin, if any be known,~~ may make the necessary arrangements with some surgeon and hospital for the operation. The expense of the operation shall be borne by the State in the same proportion as the patient is supported by the State.

§ 7709. Change from involuntary to voluntary

At any time, a patient may, with the permission of the head of the hospital, have his or her status changed from involuntary to voluntary upon making application as provided in section 7503 of this title.

§ 7710. Visits by clergy or attorney

A patient's clergyman or an attorney at law retained by or on behalf of any patient or appointed for him or her by any court shall be admitted to visit at all reasonable times.

Chapter 185: Automatic Review

§ 7801. Application for discharge

(a) A patient who has been ordered ~~hospitalized~~ into the custody or temporary custody of the Commissioner of Mental Health may apply for discharge to the ~~criminal~~ family division of the superior court within which the hospital is located. A patient who has been ordered to receive treatment other than hospitalization may apply for discharge to the ~~criminal~~ family division of the superior court which originally entered the order; the court in its discretion may transfer the matter, for the convenience of witnesses or for other reasons, to the ~~criminal~~ family division of the superior court within which the treatment is centered or in which the patient resides. ~~Applications may be made no sooner than 90 days after the issuance of an order of continued treatment or no sooner than six months after the filing of a previous application under this section.~~

(b) The hearing on the application for discharge shall be held in accordance with the procedures set forth in sections 7613, 7614, 7615, and 7616 of this title.

(c) If the court finds that the applicant is not a patient in need of further treatment, it shall order the patient discharged.

(d) If the court finds that the applicant is a patient in need of further treatment, it shall deny the application and order continued treatment for an indeterminate period in accordance with subsections 7621(b), (c), and (d) of this title.

~~§ 7802. Administrative review~~

~~The head of the hospital and the board shall cause the condition of every patient to be reviewed as regularly as practicable, but not less often than every six months, and whenever the head of a hospital or the board certifies that the patient is not a patient in need of further treatment, the patient shall be discharged. If requested by the patient all hearings by the board on the issue of granting a discharge shall be on reasonable notice to~~

~~the patient's attorney who shall be afforded an opportunity to attend. In the absence of any attorney the board shall notify the criminal division of the superior court and an attorney shall be appointed as provided in section 7111 of this title.~~

Chapter 187: Transfer of Patients

§ 7901. Intrastate transfers

The Commissioner may authorize the transfer of ~~patients~~ persons in his or her custody between the ~~Vermont State Hospital or its successor in interest~~ Vermont Psychiatric Care Hospital, the state-operated secure residential recovery facility and designated hospitals if the Commissioner determines that it would be consistent with the medical needs of the patient to do so. Whenever a patient is transferred, written notice shall be given to the patient's legal guardian or agent, if any, and any other person with the consent of the patient. In all such transfers, due consideration shall be given to the relationship of the patient to his or her family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. ~~Due consideration shall also be given to the separation of functions and to the divergent purposes of the Vermont State Hospital or its successor in interest and designated hospitals.~~ No patient may be transferred to a correctional institution without the order of a court of competent jurisdiction. No patient may be transferred to a designated hospital outside the no refusal system unless the head of the hospital or his or her designee first accepts the patient.

§ 7902. Interstate transfers

(a) The transfer of nonresident patients to out-of-state facilities shall be governed by the Interstate Compact on Mental Health.

(b) The transfer of nonresident patients from an out-of-state institution or hospital to a hospital in Vermont for the purpose of being near relatives or friends shall be in the discretion of the Commissioner who shall take into consideration the relationship of the patient to his or her family, legal guardian, or friends, in order to maintain those relationships and encourage visits beneficial to the patient.

§ 7903. Transfers to federal facilities

Upon receipt of a certificate from an agency of the United States that accommodations are available for the care of any individual hospitalized under this part of this title, and that the individual is eligible for care or treatment in a hospital or institution of that agency, the Commissioner may cause his or her transfer to that agency for hospitalization. The judge who ordered the individual to be hospitalized, and the attorney, guardian, if any, spouse, and parent or parents, or if none be known, an interested party,

in that order, shall be notified immediately of the transfer by the Commissioner. No person may be transferred to an agency of the United States if he or she is confined pursuant to conviction of any felony or misdemeanor, or if he or she has been acquitted of a criminal charge solely on the ground of mental illness, unless prior to transfer the judge who originally ordered hospitalization of such person enters an order for the transfer after appropriate motion and hearing. Any person so transferred shall be deemed to be hospitalized by that agency pursuant to the original order of hospitalization.

Chapter 189: Release and Discharge

§ 8003. Personal needs of patient

The Commissioner shall make any necessary arrangements to ensure:

(1) that no patient is discharged ~~or granted a conditional release~~ from a hospital without suitable clothing; and

(2) that any indigent patient discharged ~~or granted a conditional release~~ is furnished suitable transportation for his or her return home and an amount of money as may be prescribed by the head of the hospital to enable the patient to meet his or her immediate needs.

§ 8005. Habeas corpus

Any individual hospitalized under this title or his or her attorney or an interested party may apply for a writ of habeas corpus from any court generally empowered to issue the writ in the jurisdiction in which he or she is detained.

~~§ 8006. Visits~~

~~(a) The head of a hospital may grant a visit permit of not more than 30 days to any patient under his or her charge.~~

~~(b) The granting and revocation of visits shall be made in accordance with rules and procedures adopted by the head of the hospital.~~

~~§ 8007. Conditional discharges~~

~~(a) The board or the head of a hospital may conditionally discharge from a hospital any patient who may be safely and properly cared for in a place other than the hospital.~~

~~(b) A conditional discharge may extend for a term of six months, but shall not exceed 60 days unless the head of the hospital determines that a longer period will materially~~

~~improve the availability of a program of treatment which is an alternative to hospitalization.~~

~~(c) Unless sooner revoked or renewed, a conditional discharge shall become absolute at the end of its term.~~

~~(d) A conditional discharge may be granted subject to the patient's agreement to participate in outpatient, after-care, or follow-up treatment programs, and shall be subject to such other conditions and terms as are established by the granting authority.~~

~~(e) Each patient granted a conditional discharge shall be provided, so far as practicable and appropriate, with continuing treatment on an outpatient or partial hospitalization basis.~~

~~(f) Each patient granted a conditional discharge shall be given a written statement of the conditions of his or her release, the violation of which can cause revocation.~~

~~(g) A conditional discharge may be renewed by the granting authority at any time before it becomes absolute if the head of a hospital first determines that such renewal will substantially reduce the risk that the patient will become a person in need of treatment in the near future.~~

~~§ 8008. Revocation of conditional discharge~~

~~(a) The board or the head of the hospital may revoke a conditional discharge at any time before that discharge becomes absolute if the patient fails to comply with the conditions of the discharge.~~

~~(b) A revocation by the board or the head of the hospital shall authorize the return of the patient to the hospital and shall be sufficient warrant for a law enforcement officer or mental health professional to take the patient into custody and return him or her to the hospital from which he or she was conditionally discharged.~~

~~(c) Immediately upon his or her return to the hospital, the patient shall be examined by a physician who shall orally explain to the patient the purpose of the examination and the reasons why the patient was returned to the hospital.~~

~~(d) If the examining physician certifies in writing to the head of the hospital that, in his or her opinion, the patient is a person in need of treatment, setting forth the recent and relevant facts supporting this opinion, the revocation shall become effective and the patient shall be readmitted to the hospital. If the examining physician does not so certify, the revocation shall be cancelled and the patient shall be returned to the place from which he or she was taken.~~

~~(e) If the patient is readmitted to the hospital, he or she may apply immediately for a judicial review of his or her admission, and he or she shall be given a written notice of this right and of his or her right to legal counsel.~~

§ 8009. Administrative discharge

(a) The head of ~~the~~ a hospital may at any time discharge a voluntary or judicially ~~hospitalized patient~~ committed person whom he or she deems clinically suitable for discharge.

(b) The head of ~~the~~ a hospital shall discharge a judicially ~~hospitalized patient~~ committed person when the ~~patient~~ person is no longer a patient in need of further treatment. When a ~~judicially hospitalized patient~~ person in the custody of the Commissioner is discharged, the head of the hospital shall notify the applicant, the certifying physician, the family division of the superior court, and anyone who was notified at the time the patient was hospitalized.

~~(c) A person responsible for providing treatment other than hospitalization to an individual ordered to undergo a program of alternative treatment, under section 7618 or 7621 of this title, may terminate the alternative treatment to the individual if the provider of this alternative treatment considers the individual clinically suitable for termination of treatment. Upon termination of alternative treatment, the family division of the superior court shall be so notified by the provider of the alternative treatment.~~

Chapter 191: Support and Expense

§ 8101. Liability

(a) It shall be the duty of a patient, his or her legal representative, spouse, and, in the case of a patient who is a minor, his or her parents, in that order, to pay or contribute to the payment of the charge for the care and treatment of that patient when hospitalized under this part of this title in such manner and proportion as the Commissioner shall determine to be within their ability to pay.

~~(b) The Commissioner shall promulgate, pursuant to 3 V.S.A. chapter 25, regulations which set forth in detail the levels of income, resources, expenses, and family size at which persons are deemed able to pay given amounts for the care and treatment of a patient, and the circumstances, if any, under which the rates of payment so established may be waived or modified. A copy of the payment schedule so promulgated shall be made available in the admissions office at the Vermont State Hospital or its successor in interest.~~

(c) The Commissioner shall, at the time of the hospitalization of a patient, investigate the ability to pay of persons liable under subsection (a) of this section, and may require from the liable persons sworn statements of income, resources, expenses, and family size. The Commissioner shall notify, within 30 days of the date of admission, in writing, each liable person of the amount of his liability and the fact that liability commences on the date of admission. The notice shall include a statement of the right of the liable person to an appeal under section 8111 of this title.

(d) If any of the persons liable for support know of such liability and willfully conceal their ability to pay, they shall be ordered to pay, to the extent of their ability, charges which accrue during the period of concealment.

(e) In his or her investigation, keeping of accounts, and collection of charges, the Commissioner shall have the support and cooperation of the Department for children and families insofar as the records of that Department relate to the ability to pay.

§ 8102. Charges for care or treatment

As used in section 8101 of this title, "charge for the care or treatment" of a patient means an amount not exceeding the actual cost of the care and treatment. Actual cost shall mean either the rate provided for by a contract lawfully entered into under this part of this title, or, in the absence of a contract, a per diem rate as determined under section 8105 of this title.

§ 8103. Voluntary payments

The Commissioner may accept from any interested party any payment for the care and treatment of any patient, even if such payment is not required by an order of the Commissioner under section 8101 of this title, so long as the total payments received under section 8101 and this section do not exceed the actual cost of care and treatment.

§ 8105. Computation of charge for care and treatment

The charge for the care and treatment of a patient at the ~~Vermont State Hospital or its successor in interest~~ Vermont Psychiatric Care Hospital shall be established at least annually by the Commissioner. The charge shall reflect the current cost of the care and treatment, including depreciation and overhead, for the ~~Vermont State Hospital or its successor in interest~~ Vermont Psychiatric Care Hospital. Depreciation shall include but not be limited to costs for the use of the plant and permanent improvements, and overhead shall include but not be limited to costs incurred by other Departments and agencies for the operation of the hospital. Accounting principles and practices generally accepted for hospitals shall be followed by the Commissioner in establishing the charges.

§ 8106. Persons in arrears

At least every six months, the Commissioner shall ascertain those liable persons whose payments to the state are in arrears, the amount of the arrearage, and the amount of income or resources, excluding an estate of less than $1,500.00, from which any amount owed the State for care and treatment, as determined under section 8101 of this title, can be collected.

§ 8108. Claim allowed against estate

Claim for the care and treatment of a mentally ill person against his or her estate shall be presented and prosecuted by the Commissioner and shall be allowed by the Commissioner upon the estate, and paid by his or her administrator or executor. Such claims shall not exceed the amount which the Commissioner has found to be within the ability and legal obligation of the person to pay and full credit shall be allowed for any amounts paid prior to the death of the person.

§ 8110. Prosecution of claims

Claims due and unpaid under this part of this title shall be prosecuted and collected in the name of the State. A state's attorney or the attorney general, when requested by the Commissioner, shall appear for and in behalf of the State in the prosecution of the claims.

§ 8111. Appeals

A person aggrieved by an act or decision of the Commissioner relating to the charge for the care and treatment of a patient or to rates of payment established in accordance with section 8101 of this title shall have an immediate right of appeal under the provisions for contested cases in 3 V.S.A. chapter 25.

Chapter 193: Private Hospitals

§ 8201. Commissioner may license private hospital

After due investigation, the Commissioner may license for not less than two nor more than six years, any suitable person to keep a private hospital for the mentally ill, which shall be subject to visitations from the Commissioner. A license granted hereunder shall exempt the licensee from the licensing requirements of section 1901 et seq. of this title.

§ 8202. Revocation of license

The Commissioner may revoke any license when it appears that the holder thereof does

not exercise sufficient skill and is not possessed of adequate means and methods for the proper care and treatment of the patients therein.

§ 8203. Notice of revocation

When a license is revoked, the Commissioner shall notify the holder thereof in writing and shall file a copy of the notice in the office of the clerk of the county in which the hospital is located, within five days after the date thereof.

§ 8204. What deemed private hospital

A person who keeps or domiciles upon premises owned or occupied by him or her two or more mentally ill persons for care and treatment shall be deemed the keeper of a private hospital for the mentally ill.

§ 8205. Penalty

A person who keeps a private hospital for the mentally ill, except as provided in this chapter, shall be fined not more than $500.00.

~~Chapter 197: Mentally Ill Users of Alcohol or Drugs~~

~~§ 8401. Definitions~~

~~As used in this chapter, "drug addict" means a person who shows signs of mental illness because of his or her use of drugs, hallucinogens, stimulants, or sedatives or who has an uncontrollable desire for their use or consumption.~~

~~§ 8402. Hospitalization~~

~~Except as otherwise provided in this chapter a drug addict may be admitted to a designated hospital and provided with care and treatment in the same manner and under the same conditions as a mentally ill person.~~

~~§ 8403. Length of treatment~~

~~No drug addict may be admitted to a hospital for voluntary treatment for a period in excess of six months. If he or she is admitted by order of the criminal division of the superior court the order shall specifically provide for a maximum of six months in the hospital.~~

~~§ 8404. Conditional discharge~~

~~The board of mental health, in its discretion, may grant a conditional discharge to a~~

patient admitted under this chapter after the expiration of one month from the date of admission and may revoke any conditional discharge so granted. A revocation of a conditional discharge by the board of mental health at any time prior to the expiration of the original term of hospitalization shall be sufficient warrant for the return of the patient to the hospital from which he or she was discharged, there to remain until a subsequent conditional discharge or the expiration of the full term from the date of the original admission.

§ 8405. Outside visits

In the discretion of the head of a hospital, a patient admitted under this chapter may be permitted to visit a specifically designated place for a period not to exceed five days and return to the same hospital. The visit may be allowed to see a dying relative, to attend the funeral of a relative, to obtain special medical services, to contact prospective employers, or for any compelling reason consistent with the welfare or rehabilitation of the patient.

Chapter 204: Sterilization [Move section out of Part 8]

§ 8705. Sterilization; policy

(a) It is the policy of the State of Vermont to allow voluntary and involuntary sterilizations of adults with an intellectual disability under circumstances which will ensure that the best interests and rights of such persons are fully protected. In accordance with this policy, a person with an intellectual disability, as defined by subdivision 7101(12) of this title, may not be sterilized without his or her consent unless there is a prior hearing in the superior court as provided in this chapter. A person with an intellectual disability under the age of 18 may not be sterilized.

(b) Sterilization is defined to mean a surgical procedure, the purpose of which is to render an individual incapable of procreating.

§ 8706. Voluntary sterilization

Any person with an intellectual disability over the age of 18, who does not have a guardian with the power to consent to nonemergency surgery, may obtain a voluntary sterilization subject to all of the following preconditions:

(1) the person with an intellectual disability has freely, voluntarily, and without coercion personally requested a physician to perform a sterilization;

(2) the person with an intellectual disability has given informed consent to the sterilization in that:

~~(A) the physician has provided a complete explanation concerning:~~

~~(i) the nature and irreversible consequences of a sterilization procedure; and~~

~~(ii) the availability of alternative contraceptive measures;~~

~~(B) the physician is satisfied that the consent is based upon an understanding of that information and that before the operation is undertaken the physician personally obtains evidence of the person's retention of that understanding, not less than 10 days following the original explanation;~~

~~(C) the consent is in writing and signed by the person with an intellectual disability;~~

~~(3) the person with an intellectual disability has been informed and is aware that his or her consent may be withdrawn at any time prior to the operation; and~~

~~(4) the physician has reviewed medical records and psychological assessments of the person with an intellectual disability.~~

~~§ 8707. Competency to consent; procedure~~

~~(a)(1) If the physician from whom the sterilization has been sought refuses to perform the sterilization because he or she is not satisfied that the person with an intellectual disability has the ability to give the informed consent required by section 8706 of this title, the person with an intellectual disability may file a petition in superior court for a determination of the person's competency to consent to the sterilization.~~

~~(2) The petition shall set forth the information required by subdivisions 8709(b)(1)-(5) of this title.~~

~~(3) Upon filing of the petition, the court shall appoint a qualified developmental disabilities professional as defined in subdivision 8821(8) of this title to examine the person with an intellectual disability and present evidence to the court as to that person's ability to give informed consent.~~

~~(4) The hearing shall be limited to a determination of the person with an intellectual disability's competency to consent to a sterilization, and shall be conducted in accordance with sections 8709(c), 8710, and 8711(a) and (b) of this title.~~

~~(b)(1) If, after the hearing, the court determines on the basis of clear and convincing proof that the person with an intellectual disability is competent to consent and has given the required consent, it shall order that a voluntary sterilization may be performed.~~

(2) If the court determines that the person with an intellectual disability is not competent to give consent it shall inform the person that he or she has the right to petition the court for an involuntary sterilization pursuant to the requirements of section 8708 of this title.

§ 8708. Involuntary sterilization

(a) Any sterilization sought on behalf of a person with an intellectual disability or requested by any person denied a voluntary sterilization by section 8707 of this title shall be considered an involuntary sterilization.

(b) Involuntary sterilizations may be performed only after a hearing in the superior court pursuant to sections 8709-8712 of this title. For the purposes of involuntary sterilization proceedings under this chapter, the person with an intellectual disability subject to a petition for sterilization shall be defined as the respondent.

§ 8709. Petition and notice of hearing

(a) Any adult with an intellectual disability, his or her parent, private guardian, near relative, as defined in section 8821 of this title, or physician, may file a petition in the superior court alleging that the person has an intellectual disability and is in need of sterilization.

(b) The petition shall set forth:

(1) the name, age, and residence of the person to be sterilized;

(2) the names and addresses of the petitioner and parents, guardians, spouse, and nearest relative of said person;

(3) the mental condition of said person;

(4) a statement of said person's ability to give informed consent to the sterilization;

(5) said person's ability to pay for legal counsel;

(6) the relation of said person to the petitioner;

(7) the reasons and supporting facts why sterilization is in the best interest of said person.

(c) Upon filing of the petition the court shall fix a time and place for the hearing not more than 45 days from the receipt of the petition. Not less than 20 days prior to the date set for the hearing, the court shall cause petitioner to serve respondent with the petition and notice of hearing. The court shall also mail a copy of the petition and notice of the

hearing to respondent's counsel, his or her legal guardian, and nearest relative.

§ 8710. Appointment of counsel

The respondent shall be represented by counsel throughout the proceeding. Upon filing of the petition the court shall notify the respondent that he or she shall be afforded the right to counsel. If the petition states that the respondent is unable to pay for counsel, the court shall appoint counsel to be paid by the state or set a hearing for a determination of respondent's ability to pay for counsel. The court may also require appointment of a guardian ad litem to represent the interest of the respondent. Counsel shall receive copies of the comprehensive evaluations required by section 8711(d) of this title and such other documents as may be received and issued by the court.

§ 8711. Conduct of hearing

(a) The respondent, the petitioner, and all other persons to whom notice has been sent may attend the hearing, testify, present evidence, and subpoena, present, and cross-examine witnesses, including those who prepared the comprehensive evaluation. The court may exclude any person not necessary for the conduct of the hearing.

(b) The hearing shall be conducted according to the rules of evidence applicable in civil actions in the superior courts of the state and to an extent not inconsistent with this chapter, the rules of civil procedure of the state shall be applicable.

(c) The court shall determine the following:

(1) whether the respondent has an intellectual disability;

(2) whether the respondent is competent to give informed consent as defined in section 8706 of this title; and

(3) if the court determines that the respondent is not competent to give informed consent, whether a sterilization is in the best interests of the respondent by considering the following factors:

(A) that the respondent is physically capable of conceiving a child;

(B) that the respondent is likely to engage in sexual activity at present or in the near future under circumstances which may result in pregnancy;

(C) that the nature of the respondent's disability renders the respondent incapable now or in the future of caring for a child;

(D) that the respondent's disability is not likely to improve, nor does medical knowledge exist to establish that an advance in treatment of the disability is likely; and

(E) that no effective, less drastic alternative to sterilization is medically indicated which will meet the needs of the respondent.

(d) The court shall order the Commissioner of Disabilities, Aging, and Independent Living to arrange for the preparation of a comprehensive medical, psychological, and social evaluation of the person through developmental disability agencies affiliated with the Department. The comprehensive evaluation shall be completed within 30 days of the receipt of the petition. The medical report shall be prepared by a physician and shall describe the physical condition of the respondent and the availability of the effective alternative contraceptive measures to meet the needs of the person. The psychological report shall include a diagnosis of the person's intellectual ability and social functioning. The social report shall be prepared by a qualified developmental disabilities professional, and shall describe the respondent's developmental and social functioning.

(e) The petitioner shall have the burden of proving the elements of the petition by clear and convincing evidence.

(f) The evaluation shall be received into evidence, if the persons who prepared the evaluation are available for the hearing or subject to service of subpoena. However, the court shall not be bound by the evidence contained in the evaluation, but shall make its determination upon the entire record.

§ 8712. Findings; order

(a) The court shall prepare written findings of fact and state separately its conclusions of law in all cases.

(b) If upon completion of the hearing and consideration of the record, the court finds that the person with an intellectual disability is competent to give informed consent and no such consent has been given, no sterilization may be ordered.

(c) If upon completion of the hearing and consideration of the record, the court finds that the person is incompetent to consent and that the sterilization is in the best interests of the person, it shall order that an involuntary sterilization may be performed.

§ 8713. Confidentiality of proceedings

All proceedings under this chapter shall be closed to the public, and the records shall be sealed unless requested to be opened by the respondent.

~~**§ 8714. Appeal; automatic stay**~~

~~(a) Any party to the proceeding shall have the right to appeal from a judgment issued pursuant to this chapter within 30 days of the judgment pursuant to the Vermont rules of appellate procedure.~~

~~(b) If the court has issued a judgment allowing sterilization, the judgment shall not become final for 30 days. An appeal of such a judgment shall operate as a stay of the order during the pendency of the appeal or during the pendency of any further appeal to the United States Supreme Court.~~

~~**§ 8715. Liability; costs**~~

~~(a) Sterilizations performed pursuant to this chapter shall be legal and no person shall be civilly or criminally liable for performing a sterilization pursuant to such order of the court; provided, however, that the provisions of this chapter shall not affect any liability which may be incurred as a consequence of the manner in which such sterilization operation is performed.~~

~~(b) The cost of evaluations required by sections 8707 and 8709 of this title shall be paid for out of appropriations of the Department of disabilities, aging, and independent living.~~

~~**§ 8716. Jurisdiction**~~

~~The superior court shall have exclusive original jurisdiction over all proceedings brought under this chapter. Proceedings under this chapter shall be commenced in the superior court of the county in which the person with an intellectual disability resides.~~

Chapter 207: Community Mental Health and Developmental Services

§ 8901. Purpose

The purpose of this chapter is to expand community mental health and developmental disability services; to encourage participation in such a program by persons in local communities; to obtain better understanding of the need for community mental health and developmental services; to authorize funding for the program by state aid, local financial support, and direct payment by people who receive services who have the ability to pay and to provide services to persons with a mental condition or psychiatric disability, persons with a developmental disability, and children or adolescents with a severe emotional disturbance.

§ 8907. Designation of agencies to provide mental health and developmental

disability services

(a) Except as otherwise provided in this chapter, the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living shall, within the limits of funds designated by the legislature for this purpose, ensure that community services to persons with a mental condition or psychiatric disability and persons with a developmental disability throughout the State are provided through designated community mental health agencies. The Commissioners shall designate public or private nonprofit agencies to provide or arrange for the provision of these services.

(b) Within the limits of available resources, each designated community mental health or developmental disability agency shall plan, develop, and provide or otherwise arrange for those community mental health or developmental disability services that are not assigned by law to the exclusive jurisdiction of another agency and which are needed by and not otherwise available to persons with a mental condition or psychiatric disability or a developmental disability or children and adolescents with a severe emotional disturbance in accordance with the provisions of 33 V.S.A. chapter 43 who reside within the geographic area served by the agency.

§ 8908. Local community services plan

Each designated community mental health and developmental disability agency shall determine the need for community mental health and developmental disability services within the area served by the agency and shall thereafter prepare a local community services plan which describes the methods by which the agency will provide those services. The plan shall include a schedule for the anticipated provision of new or additional services and shall specify the resources which are needed by and available to the agency to implement the plan. The community services plan shall be reviewed annually.

§ 8909. Boards of directors of nonprofit corporations designated as community mental health and developmental disability agencies

(a) The board of a nonprofit corporation that is designated by the Commissioner of mental health or of disabilities, aging, and independent living to be a community mental health and developmental disability agency shall be representative of the demographic makeup of the area served by the agency. A majority of the members of the board shall be composed of both individuals who are or were eligible to receive services from an agency because of their disability, and family members of an individual who is or was eligible to receive services because of his or her disability. The board president shall survey board members on an annual basis and shall certify to the Commissioner that the composition of the board is comprised of a majority as required by this section. This composition of the board shall be confirmed by the organization's annual independent

audit. Annually, the board shall determine whether or not this disclosure shall be made available to the public on request. The board shall have overall responsibility and control of the planning and operation of the community mental health agency.

(b) The Board shall direct the development of the local community services plan and shall consult with the Commissioners, with consumers, with other organizations representing persons receiving services, persons with developmental disabilities, and children and adolescents with a severe emotional disturbance, and with other governmental or private agencies that provide community services to the people served by the agency to determine the needs of the community for mental health and developmental disability services, and the priority need for service. The plan shall encourage utilization of existing agencies, professional personnel, and public funds at both state and local levels in order to improve the effectiveness of mental health and developmental disability services and to prevent unnecessary duplication of expenditures.

(c) For the purpose of this section:

(1) “Disability” means, with respect to an individual,

(A) a physical or mental impairment, including alcoholism and substance abuse as defined by the Americans with Disabilities Act, that substantially limits one or more of the major life activities of the individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(2) “Family member” means an individual who is related to the individual with a disability by blood, marriage, or adoption, or considers him or herself to be family based upon bonds of affection, and who currently shares a household with the individual with a disability or has, in the past, shared a household with that individual. For the purposes of this section, “bonds of affection” means enduring ties that do not depend on the existence of an economic relationship.

(3) “Commissioner” means either the Commissioner of the Department of Mental Health or the Commissioner of the Department of disabilities, aging, and independent living, or both, depending on the circumstances and subject matter of the issue or issues being addressed.

§ 8910. State aid; fees

(a) Upon application to the Commissioner by a designated community mental health and developmental disability agency, the Commissioner of the appropriate Department may

grant to the agency funds to be used for carrying out its mental health and developmental disability services. Such grant of funds shall be based on a program plan and program budget developed by the agency and submitted to and approved by the Commissioner or Commissioners. The budget plan must indicate cost per unit of service, anticipated fees for services, and must represent a balanced plan of anticipated receipts and expenditures.

(b) No state funds shall be distributed to a community mental health agency unless the Commissioner determines that the agency has a reasonable cost per service unit and has established a uniform and reasonable schedule of fees for services provided to those persons who can afford to pay. A policy statement regarding fees, instructions for payment of fees, and fee collection procedures to be used by the agency shall be prepared and updated annually.

(c) Nothing in this section should be interpreted to preclude anyone from receiving the services of the agencies due to inability to pay nor to preclude an agency from bringing an action as provided by law to recover fees due.

§ 8911. Powers of the Commissioners

(a) If the Commissioners after discussion with the board of a community mental health and developmental disability agency determine that the local community services plan required by section 8908 of this chapter is inadequate to meet the needs of persons with a mental condition or psychiatric disability or with developmental disabilities or children and adolescents with a severe emotional disturbance in accordance with the provisions of 33 V.S.A. chapter 43 in the area served by a mental health and developmental disability agency or that an agency has, for reasons other than lack of resources, failed or refused to implement an otherwise adequate plan, the Commissioners shall take one or more of the following steps:

(1) offer technical assistance to the agency;

(2) actively seek out and designate another agency to provide the needed services;

(3) directly provide or arrange the needed services if it appears that the services will not otherwise be available within a reasonable period of time. The remedies specified in this subsection shall be in addition to any other rights and remedies which are available to the Commissioner under state or federal law.

(b) Until May 1, 1998, no agency which has been designated as a community mental health agency may lose its designation without first being provided with notice and an opportunity for hearing in accordance with the provisions of 3 V.S.A. §§ 809-813. After May 1, 1998, no agency may lose its designation except in accordance with new rules adopted for that purpose under the provisions of this subsection. Notwithstanding any

other provisions to the contrary in 3 V.S.A. chapter 25, the Commissioner shall, in consultation with the designated provider system and consumer groups, develop proposed rules setting forth the standards and procedures for designation, redesignation, and loss of designation, and provide for six months' notice of intent to revoke an agency's designation. The proposed rules shall also provide standards with measurable performance-based criteria and a streamlined appeals process. On or before December 31, 1997, the Commissioner shall file and hold public hearings on the proposed rules as provided in 3 V.S.A. §§ 838, 839, and 840 in accordance with 3 V.S.A. chapter 25. The Commissioner shall file the final proposed rules with the general assembly on or before January 15, 1998. Unless disapproved by act of the general assembly on or before April 1, 1998, the Commissioner may adopt the rules by filing with the Secretary of State, which rules shall take effect on May 1, 1998.

(c) The board of directors of a community mental health and developmental disability agency will be given a six-month notice of any intent on the part of the Commissioners to terminate its designated status. The Commissioners shall provide a written notice which outlines the performance based rationale associated with such intent. The board of directors shall have six months to review the Commissioners' stated concerns and implement a corrective action plan. The board of directors shall also be informed, in writing, of current standards and procedures regarding appeal processes.

§ 8912. Contracts with nondesignated agencies

The Commissioners may enter into agreements with local community mental health and developmental disability agencies or with any public or private agency for the purpose of establishing specialized services which are needed by persons with a mental condition or psychiatric disability or with developmental disabilities or children and adolescents with a severe emotional disturbance and are not available from designated community mental health agencies.

§ 8913. Minimum program standards and other regulations

(a) The Commissioners shall establish minimum program standards for services provided by community mental health and developmental disability agencies. Minimum program standards shall specify the basic activities and resources which are necessary for the implementation of such programs.

(b) The procedure for establishing such standards shall be in accordance with 3 V.S.A. chapter 25.

Chapter 209: Interstate Compact on Mental Health

§ 9001. Purpose--Article I

The party states find that the proper and expeditious treatment of the mentally ill and developmentally disabled can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and developmentally disabled under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

§ 9002. Definitions--Article II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or developmental disability.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare, or the welfare of others, or of the community.

(g) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the commonwealth of Puerto Rico.

§ 9003. Institutionalization of patients--Article III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or developmental disability, he or she shall be eligible for care and treatment in an institution in that state irrespective of his or her residence, settlement, or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he or she would be taken if he or she were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

§ 9004. Aftercare and supervision--Article IV

(a) Whenever pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the

person in whose charge it is proposed to place the patient, the complete medical history of the patient and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

§ 9005. Escape of patients--Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he or she shall be detained in the state where found pending disposition in accordance with law.

§ 9006. Transportation--Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

§ 9007. Costs--Article VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the Departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions, as to the payment of costs, or

responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or developmentally disabled, or any statutory authority pursuant to which such agreements may be made.

§ 9008. Guardians--Article VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his or her own behalf or in respect of any patient for whom he or she may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his or her power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term “guardian” as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency, however denominated, who is charged by law with power to act for or responsibility for the person or property of a patient.

§ 9009. Criminal patients--Article IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or developmental disability, the person would be subject to incarceration in a penal or correctional

institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup, but the patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or developmental disability.

§ 9010. Compact administrator--Article X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his or her state, shall act as general coordinator of activities under the compact in his or her state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by his or her state either in the capacity of sending or receiving state. The compact administrator or his or her duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

§ 9011. Supplementary agreements--Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or developmental disability. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

§ 9012. Adoption; effect--Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

§ 9013. Withdrawal--Article XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of

any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by article VII(b) as to costs or from any supplementary agreement made pursuant to article XI shall be in accordance with the terms of such agreement.

§ 9014. Construction; separability of provisions--Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ 9051. Administrator

The Commissioner of mental health is hereby designated the compact administrator. The Commissioner shall administer the compact set out as subchapter 1 of this chapter with the power and duties therein specified and shall have authority to incur, on behalf of the state, financial obligations necessary for the proper performance of his or her duties under the compact. If any supplementary agreement made under the compact requires or contemplates the use of any institution or facility of the state or other service of the state, the agreement shall not take effect until its relevant provisions are approved by the general assembly. The compact administrator shall cooperate with other officers, Departments, and agencies of the state which are affected by the compact administrator's actions in the performance of his or her duties.

§ 9052. Transfer of patients

The compact administrator shall consult with the immediate family of any person whom he or she proposes to transfer from a state institution to an institution in another state which is a party to this compact and shall take final action as to the transfer of such person only with the approval of the superior court of the unit of original commitment.

Chapter 211: Uniform Act for Extradition of Persons ~~of Unsound Mind~~ with Mental Illness

§ 9101. Definitions

The words "flight" and "fled" as used in this chapter shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending, with the effect of avoiding, impeding, or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if he or she then were under detention by law as a person ~~of unsound mind~~ in need of treatment or person in need of further treatment and subject to detention. The word "state" wherever used in this chapter, shall include states, territories, districts, and insular and other possessions of the United States. As applied to a request to return any person within the purview of this chapter to or from the District of Columbia, the words "executive authority," "governor", and "chief magistrate" respectively shall include a judge of the United States district court for the District of Columbia and other authority.

§ 9102. Who may be extradited

A person alleged to ~~be of unsound mind~~ a person in need of treatment or a person in need of further treatment found in this state, who has fled from another state, shall, on demand of the executive authority of the state from which he or she fled, be delivered up to be removed thereto, if at the time of his or her flight:

(1) He or she was under detention by law in a hospital, asylum, or other institution for ~~the insane as a person of unsound mind~~ persons with mental illness; or

(2) He or she had been theretofore determined by legal proceedings to be ~~of unsound mind~~ a person in need of treatment or a person in need of further treatment, the finding being unreversed and in full force and effect, and the control of his or her person having been acquired by a court of competent jurisdiction of the state from which he or she fled; or

(3) He or she was subject to detention in such state, being then his or her legal domicile (personal service of process having been made) based on legal proceedings there pending to have him or her declared ~~of unsound mind~~ a person in need of treatment or a person in need of further treatment .

§ 9103. Duty of governor

When the executive authority of any state demands of the governor any fugitive within the purview of section 9102 of this title and produces a copy of the commitment, decree, or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has filed, with an affidavit made

before a proper officer showing the person to be such a fugitive, the governor shall cause him or her to be apprehended and secured, if found in this state, and to cause immediate notice of his or her apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he or she shall appear. If such agent does not appear within 30 days from the time of the apprehension, the fugitive may be discharged. All costs and expenses incurred in apprehending, security, maintaining, and transmitting such fugitive to the state making such demand, shall be paid by such state. An agent so appointed who receives the fugitive into his custody shall be empowered to transport him or her to the state from which he or she has fled. The governor is hereby vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of this chapter.

§ 9104. Limitation on proceedings

Any proceedings under this chapter shall be begun within one year after the flight therein referred to.

§ 9105. Uniformity of interpretation

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.